

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, 25th 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

WHOLE HEARING

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

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.

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

C 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.

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-

F 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

F 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.

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-

MS STACEY: Yes.

H

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.

H

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-

MS STACEY: Factors, yes, yes.

B 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 rule 40.9, what does that really mean-

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

G [Crosstalk]

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

H

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-

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.

H

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

H

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.
MRS JUSTICE HILL: There are some examples, I think Bennathan J and Ritchie J committing
C 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.
H

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.

B MRS JUSTICE HILL: -for taking over if you like but it might be said that that is helpful, I hope,
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.

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

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
use up all the time that you have and then we do not even get to whether your injunction is
extended.

F 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

H

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
G of what you are allowed to say on a review, I do not believe I have seen a – and that,
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-

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-
[Crosstalk]

F MRS JUSTICE HILL: -the difficulty with that option and I am going to perhaps obviously hear from-
MS STACEY: Yes.
MRS JUSTICE HILL: -Mr Simblet too but I wanted to try and cut through the issues before we

G 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.

H

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

H this point in time.

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

B 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-

C 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?

D 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.

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-

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

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-

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

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?

H MS STACEY: Not at this point no-

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.
 The – in a sense, can I just park that point in this way and look at what you would do if
 D 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

H

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
B Branch-

MRS JUSTICE HILL: On a-

MR SIMBLET: -you've read-

MRS JUSTICE HILL: -basis-

MR SIMBLET: -you've read the skeleton argument, you – it's up to you, I mean suppose we just,
C 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
D 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
E 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
F 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
G 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
D 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 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
H

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 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-

B
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?

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-

D 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-

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-

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 –

B 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

C 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

D 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

E 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

F 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

G 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.

H So, but for that – that's sort of the way into this. In relation to the proposal that My Lady

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.

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
C 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.

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
G 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

H

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
F 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.

G 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
H

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

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

H

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

E 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

F Ms Branch should be joined under CPR 40.9.

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

G 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?

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.

C MRS JUSTICE HILL: I understand Mr Simblet but I think the nature of the involvement of
 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-

MRS JUSTICE HILL: -because your primary position is or your starting point is, I think what you

G 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?

H MR SIMBLET: Yes, we've set out how you can be here if-

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

H

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.

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
C 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.

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
D 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?

MS STACEY: Yes and that's a point that we, in due course, would say in the direct effect – the –
G 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
B yesterday there was a slow march protest outside [Sir Shelton's?] Tower. Those persons
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
C unknown categorisation[?] and is therefore – it wouldn't be appropriate to join her.
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
D 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-

MS STACEY: -Your Ladyship's proposal is a perfectly fair approach procedurally. Ms Branch
D 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
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
E 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
counsel was mindful of, I will take you to the attendance note but you will have to consider
F 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.

And finally, My Lady, it was suggested that there is – well, there's a front and centre
G 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
Bennathan J and we've not decided, as I think Mr Simblet put it, to bring the proceedings
H

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,
it's a mischaracterisation to say that they're simply asking for a year. We're not. If you
E 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 which is I need to take instructions. So, that wasn’t my suggestion un-caveated. But I do

D 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?] guidelines the judges were taken through the conspiracy torts and all the issues that are

E 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.

H MRS JUSTICE HILL: But I think Bennathan J’s approach to directly affected was that the

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.
So, Bennathan and National Highways which is a hearing I was involved in, the
C 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
E them, some of them, none of them.
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
F 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,
H

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.

B 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.

C 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.

D 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.

E 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-

F 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-

G 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-

H MR SIMBLET: Well-

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

E that is to put them in a little box and say that they come back, properly developed, another 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.

MR SIMBLET: Yes.

D 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

D right?

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
E course-

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

G National Highways case before the orders came out, it's quite discursive[?]. But by the end 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?

D MS STACEY: Yes. Although the attendance note isn't dated.
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-

F MS STACEY: Ah, the previous skeleton is 2358-
 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
 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-

H

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-
MRS JUSTICE HILL: -right-

H

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 14th 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...
 MRS JUSTICE HILL: Yes?
 D 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 –
 H sorry, page 193, paragraph 5(1), it was [sought that?] an extension of the injunction until

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.

MS STACEY: -August and that application actually isn't necessary – hadn't been listed to be
 B 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
 F 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
 G 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.

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-

H

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.

MS STACEY: Indeed, yes. So, then we can skip, I think, to B which deals with the renewal

E proceedings and at page 34 of the other bundle you see the application for the proceedings to be heard together.

MRS JUSTICE HILL: Yes.

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

F for the review date to be heard in relation to stations, this is all just procedural.

MRS JUSTICE HILL: Yes.

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.

G **Pause.**

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

H

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 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.

B 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 MRS JUSTICE HILL: 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-
MRS JUSTICE HILL: Yes.

D 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 circumstances of their arrest to make sure they're properly joined, that's per Freedman J in *TFL v Lee*.

E 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

F 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.

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-

H

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
 their comments on the draft order as at the date of Ms Oldfield's statement, 19 April-
 F 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
 bundle at 420, it is more whether there is anything that they have said about the wording of
 H 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-

MS STACEY: Well, it has been argued by me but a very strong indication was given by the judge

F 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.

H 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?

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
 H that-

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 26th-

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.
 MS STACEY: Yes, 24 August is the date – over the page you see a photograph at 2632, 633 and
 B 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?
 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
 E 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
 G can be seen at 701.
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?

D 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.

Pause.

E 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.

H 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

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?

MS STACEY: Exactly, so, the request has been made [as I?] - and the schedule is evidence of, C 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.

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?

H

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.

G 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

H

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.

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

H

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 be 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.

F 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-

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

B needn't take you to that unless you want to see it at this stage?

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

H August in Scotland, a group of activists planned[?] - demonstrates outside the gates of

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-

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.

MS STACEY: Yes, you are absolutely right, so, I got that mixed up, sorry, to correct the Court
E 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
right, sorry, to say that Shell Haven is the same as Kingsbury, it's a different area of land.
F 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

B the top of 200-

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.

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

MS STACEY: The issue of the call, exactly. I mean these are simply examples – you will – what

E 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-

MRS JUSTICE HILL: Yes.

MS STACEY: -is referred to in that witness statement. Then you have a further reference at 6.6(2)

F 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

G 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

H in the same – in the skeleton argument to protestors on 31 January, Greenpeace protesters,

bottom of paragraph 16, boarding a storage facility owned by Shell. And that's referred to

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, C 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. 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. D Bundle six which is bundle G contains the previous pleadings, applications and attendance notes and skeletons which were considered by the previous judges.

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. G 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 H

A activities which had already taken place, including at 12.2 in relation to Shell Haven where
protestors blocked the main entrance, police attended. At 12.2 a tanker was blocked in and
they were removed after approximately six hours. And similar activities in relation to
B Kingsbury which is essentially an identical target site. And then 13 refers to protesters
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
C 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
D 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
E 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
F 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
G 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-

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

H

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.

MS STACEY: Yes, it's private nuisance, it's just extrapolated out in two different paragraphs.

D 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

E because he didn't extend the injunctions to private land – to public land.

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?

MS STACEY: Because that was the basis on which they were sought, so, the Court is aware, that

F 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.

D MS STACEY: -and he was represented by his counsel, Robert Stern, who put in a skeleton
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?

G MS STACEY: In the particulars, yes, but ultimately the order that we ended up with [preserved
only?] if you like the private nuisance claim.

H 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-
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.

H

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.

H

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 Haven...”-

B 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

H

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

H

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 clearer, I accept that, My Lady. So taking the particulars of claim then, paragraph... yes,

F 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.

H

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
F which this tort is framed, is that right?
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?

H

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-

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.

H

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.

H

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

D damage, I think adds the context and the colour-

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.

MS STACEY: So that's how its put at 2.2 and 2.3 and then there are further particulars given at

F 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

G obtaining a precautionary injunction it is not incumbent on us to prove that there is actual

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.

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 –

C 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.

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,

D “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

E activities are positively designed to prevent [the sale?].

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
C 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.

Pause.

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

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.

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

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
G 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-

H

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-

H MS STACEY: The petrol stations one?

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

D 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

E – 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

F 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.

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

G 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 D 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 E 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.

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 F 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.

G MRS JUSTICE HILL: Which is why, according to the footnote, it is placed on the basis of nuisance?

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-

H MRS JUSTICE HILL: I see, and in fact the answer to my question is met at paragraph 12 of your

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.

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-

F 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

H of acts which were plainly not unlawful then the serious issue to be tried test wouldn't have

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

H

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-

E MRS JUSTICE HILL: Well, I may need to just revisit how-

MR SIMBLET: -partly as a favour to my solicitors in different form and different numberings on –

F 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-

H

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?

D MS STACEY: He changed the alternative service provisions-

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

H

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-

D 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-

MRS JUSTICE HILL: Yes.

E MS STACEY: -at page two-

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

H

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
E 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
F 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.

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-

E 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-

H

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?]

H

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,
G that would be... that would be going too far because it – but there must be some meaning to
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-

A MRS JUSTICE HILL: -the injunction made by my learned colleagues is about to expire in two places-

MS STACEY: Indeed.

B 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-

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.

B MS STACEY: Yes but then you've got the alternative – then if you've complied with *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 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

C 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-

E MS STACEY: Yes but there's a reason that those provisions are in there, because whilst, you 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 what else is the claimant to do? Other than, as I discussed, to name the persons and to join

F 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 jurisdictional approach is on a review of protest injunctions against persons unknown-

G 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-

H MS STACEY: Yes.

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, D 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 E 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-

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?

H

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-

MS STACEY: And then we’ve got the exhibits in F which it consists of two bundles, F, A and –

G 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.

MRS JUSTICE HILL: -which I have taken out-

H

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?

C MS STACEY: They are, so, they are, I mean some of those might be to do with service and not so
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
are material placed before the previous judges.

D 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?

MS STACEY: -and then I need – well, and I've done a lot of the legwork then because our
F 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.

MS STACEY: -but is the – there was – there remains a risk if you apply the serious – or I'll be
G adopting the approach set out in our skeleton argument which is they are – the protection is-

[Crosstalk]

MS STACEY: -below-

[Crosstalk]

MS STACEY: -prepared to scrutinise that-

H

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-

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-

E 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]
MS STACEY: -tendency to evolve in this way with – I am content with that.

D MRS JUSTICE HILL: Thank you. I am grateful, thank you, 10.30.
Court rises.

E

F

G

H

A

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

B

C

D

E

F

G

H

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No. QB-2022-001420

The Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 26th April 2023

before

THE HONOURABLE MRS JUSTICE HILL

SHELL

- 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

WHOLE HEARING

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

A Case called on.

MRS JUSTICE HILL: Good morning.

MS STACEY: Good morning, My Lady. So a tiny bit of housekeeping. You will have been handed I think a further supplemental bundle from our side which includes eight items.

B MRS JUSTICE HILL: Yes. And I have received I think essentially within that bundle, further skeleton arguments that were placed before the previous Judges.

MS STACEY: Yes.

MRS JUSTICE HILL: And then a comparison of some of the orders.

MS STACEY: Indeed.

C MRS JUSTICE HILL: So I have read those, I have had a chance to scan those.

MS STACEY: There's also a letter explaining why there was no additional [inaudible].

MRS JUSTICE HILL: Yes.

MS STACEY: Thank you. You've also got statements from [Ms Branch?] and [Ms Freeall?] and a note from Mr Simblet?

D MRS JUSTICE HILL: Correct.

MS STACEY: And I've just recently handed up some documents which I will explain the relevance of in a moment.

MRS JUSTICE HILL: I have taken the chance overnight to read what I will call the initial evidence.

E MS STACEY: Thank you.

MRS JUSTICE HILL: And I have read the attendance notes that were already available, primarily of the substantive hearing, if I can call them that way. So as far as the hearing before Bennathan J is concerned, there is in fact what seems to be a note of the judgment at page

F 2335. So that is what I have read as well as the Johnson judgment.

MS STACEY: I'm grateful for that.

MRS JUSTICE HILL: And plainly, I do not know Mr Simblet, there was a comment I think made about there not being a judgment of Sweetings J available. Was that in relation to these proceedings or the other injunction?

G MR SIMBLET: That's in relation to the other injunction, the Kingsbury one.

MRS JUSTICE HILL: The Kingsbury one.

MR SIMBLET: Which was mentioned in Ms Stacey's submissions yesterday.

MRS JUSTICE HILL: Yes.

H

A MR SIMBLET: And being one of the reason that Shell, having initially sought injunctive relief for themselves at Kingsbury.

MRS JUSTICE HILL: Yes.

B MR SIMBLET: Decided not to because the Local Authority had obtained an injunction. And it was that injunction under which people have been sent to prison and committal proceedings brought, that one year later nobody knows what the Judge's reasons for that are. So I only mention it for My Lady because it has been part of Ms Stacey's explanation as to why she – why injunctions have or have not been sought in different contexts.

MRS JUSTICE HILL: But it is not in relation to-

C MR SIMBLET: It's not in relation to-

MRS JUSTICE HILL: Mr Wheating[?] in this case, if I can call it that?

MR SIMBLET: No. No.

MRS JUSTICE HILL: No, I understand.

D MR SIMBLET: But on the point that My Lady mentions about the judgment of Bennathan J, of course that is a solicitor's note of the judgment.

MRS JUSTICE HILL: Yes.

MR SIMBLET: It is not the judgment itself.

MRS JUSTICE HILL: Or a transcript.

E MR SIMBLET: Or a transcript, or a – and we – and also, I mean this is – there has been a change of legal representation since those proceedings were put. So in a sense, the Court does not even have the security of knowing that the solicitors currently instructed in this matter are the people who produced that note.

F MRS JUSTICE HILL: Yes, and it is perhaps surprising that there is not a transcript available of it, but we are where we are.

MR SIMBLET: We are where we are, but when I come to address you as to the role we can or should be allowed in these proceedings, those are part of the relevant context.

MRS JUSTICE HILL: I understand.

G MR SIMBLET: That you are very dependent, respectively, on the submissions being made by the people who want the injunction and who have it. And one of the safeguards that the Court expects is that there are notes of judgment, or information about the judgment, so that the Court can be fully apprised as to what's happened and why. And that is one of the limitations on your ability to engage fully with the material.

H

A MRS JUSTICE HILL: Thank you.

MR SIMBLET: That's my submission.

MRS JUSTICE HILL: Thank you. And Ms Stacey, you were just directing me to the other documents that had been placed on my desk.

B MS STACEY: Yes.

MRS JUSTICE HILL: So there is a service chronology?

MS STACEY: Indeed, so if I could just ask you to – can we just take stock and I'll tell Your Ladyship what I propose to do hopefully very briefly this morning in order to assist Your Ladyship in deciding on the proper approach to the review, and for the 40.9 application.

C I propose to address Your Ladyship on a few points that were left hanging over night. So taking stock of where we are, I will review where we've got to, and then I'm going to clarify our position following consideration overnight as to the approach on review. I've done some further research and I'll explain to Your Ladyship what our position now is in relation to that which I hope will help.

D And thirdly I'll then go onto our position in relation to 40.9 which I hope will also help. And then come back to the review evidence and continue that process that we were concluding yesterday afternoon.

E So far as where we are, My Lady, yesterday we proceeded on the basis that the review and our application for a continuation of the existing injunctions which are about to but have not yet expired, was made on the basis that there would be – they would be treated as having been made with no opposition, in the sense that you haven't yet decided the 40.9 application and Ms Branch's standing to oppose. So you will recall, Your Ladyship, you said let's proceed on that basis for now.

F Our position is obviously that there is a continued threat which justifies the continuation. Nothing has changed and the harm that would eventuate if the protections were lifted would be severe. If we're right and it proceeds on a non-opposed basis, then we say the question for Your Ladyship is whether or not there's any reason to decline the extensions that we're seeking per *TFL v Lee*. And our position is that the answer to that question posed rhetorically is no. And I'll come back to that in due course. But before I do so, My Lady, as I say we've marshalled our thoughts overnight on the issue of the test which was vexing a number of us yesterday, and our position on 40.9 which I propose to run through.

G

H

A So far as the test of review is concerned, we accept there's a starting point that this is different to the situation of *TfL -v- Lee* in the sense that there were named defendants and there was no representation on the other side. That second part is caveated, because at the moment we're proceeding on the basis of no opposition. But certainly no named defendants.

B MRS JUSTICE HILL: I think in *TfL*, was the position not only there were no – there was no representation was there from any 40.9 point either?

MS STACEY: Quite.

MRS JUSTICE HILL: So just let me clear.

C MS STACEY: Yes, that's right.

MRS JUSTICE HILL: Looking at the Freedman injunction judgment at 165, the original injunction judgment, that makes clear that there were 62 individuals as well as Ms Lee, is that right?

MS STACEY: Yes.

D MRS JUSTICE HILL: Looking at 191 65. And then looking at 192, one can see that when it came back before Kavanaugh J, there were no defendants represented.

MS STACEY: Yes, there were no representations.

MRS JUSTICE HILL: I think one attended it looks like.

E MS STACEY: Yes, but no 40.9 application being made. So we accept that that-

MRS JUSTICE HILL: So just pause there, the distinction is that there were named defendants who chose or did not attend?

MS STACEY: Yes.

F MRS JUSTICE HILL: Apart from one. So to that extent there is a distinction because the Court can say that that is an *inter partes* decision albeit it that was *parte* has chosen not to be there or elected not to make representations.

MS STACEY: Indeed, or an unopposed if you like, *inter partes*-

G MRS JUSTICE HILL: *Inter partes* but unopposed. And there were no, one might call them 40.9 group?

MS STACEY: Yes.

MRS JUSTICE HILL: Whoever – whatever the basis for that, whether it is [inaudible] or 40.9, there was nobody in that category either. I accept that, yes.

H MS STACEY: Yes, so that's certainly the starting point, and as I say, having done some research

A and given it further thought, this is our position: We accept and recognise that the general approach on the review may very well be different if – depending on whether-

MRS JUSTICE HILL: I am sorry to interrupt. You call it a review but your injunction expires next week. You call this a review hearing, but your injunction expires on Tuesday.

B MS STACEY: It does.

MRS JUSTICE HILL: In two cases.

MS STACEY: It does.

MRS JUSTICE HILL: So you are describing it as a review, but I am sorry to say it might be more helpful to call it your application, because-

C MS STACEY: Well an application for a variation of the existing orders, that they be continued. Because that's essentially what we're doing here. We've got some-

MRS JUSTICE HILL: Well that is how you would frame it.

MS STACEY: That's how we frame it.

MRS JUSTICE HILL: That is how you want to frame it.

D MS STACEY: Yes.

MRS JUSTICE HILL: But the reality is legally, is it not, that if I do not grant this injunction in the form you seek, it will expire on Tuesday in two cases.

MS STACEY: They will lapse.

E MRS JUSTICE HILL: Yes. So although you frame it as a review, that is no doubt how you wish to frame it legally for your reasons, but I think one needs to be a little bit careful with the language. I am not sure that necessarily that is the correct label for it.

MS STACEY: Well certainly in relation to the stations order, that is that there specifically provision for a-

F MRS JUSTICE HILL: That is how it has been labelled and how it has been described.

MS STACEY: It may not matter what the label is, I mean ultimately it may not matter, but-

MRS JUSTICE HILL: But I do not read in Johnson J's judgment, or indeed in the transcript of those hearings, any discussion about what this hearing really is. Apart from the fact that there will be some kind of time limit on the injunction.

G MS STACEY: Yes, and that's per *Barking & Dagenham*, whereby interim injunctions have to be kept – have a temporal limit, and the Court has a supervisory role to determine from time to time what they deem it should be. So there's a supervisory role to determine – what *Barking* doesn't say is that the claimant should allow the injunctions to lapse and then start

H

A fresh. It's entirely consistent we say with the Master of the Rolls analysis in *Barking* that the review process should be put in place as long as the injunction – as the proceedings are on foot, because these applications arise out of the same set of proceedings. And here we say we are seeking an order in materially identical terms, but for the description of the persons unknown which is sought to be made in a discrete way. So that is part of the context. But whether one calls it an application for a continuation of the existing injunctions, whether one says this is a review hearing, might not matter. The bottom line My Lady is that these injunctions have not yet [break in audio] they are on foot.

MRS JUSTICE HILL: Yes.

MS STACEY: And the question is how one approaches the hearing which we now have and what is the test for Your Ladyship.

MRS JUSTICE HILL: I am just not sure I am – all I am saying is I am not sure I have seen developed thinking around exactly what the test is and any of the other authorities.

MS STACEY: Well this is what I'm proposing-

MRS JUSTICE HILL: Yes, so although we are calling it a review, you are calling it that, I am not sure it is legally established that that is in fact the status of it albeit some shorthand is used to call it that.

MS STACEY: Yes, there had been reference to review. In one of the – the order which provided for the – all three to be heard together, used the language of continuation. So-

MRS JUSTICE HILL: Yes, but no doubt that is because they are application notices.

MS STACEY: Indeed. So both of those recognise as to the context within which the application is made, namely that it's under the umbrella of the same set of proceedings, in relation to any [inaudible] an order. As opposed to us having gone off in another set of proceedings seeking an entirely fresh order *de novo*. So I'm going to call it review, My Lady, with My Ladyship's leave, simply for shorthand purposes.

So, where I was at was that we recognise that the general approach on what I call a review may be different depending on whether that hearing is opposed or unopposed, okay? So scenario one, My Lady. If the hearing is unopposed, *inter partes* unopposed, as per *TfL -v- Lee*, there is no clear guidance. We've done some research, other than *TfL -v- Lee*, in relation to what the appropriate test should be.

MRS JUSTICE HILL: So just pause there. If *inter partes* but unopposed, as per *TfL*?

MS STACEY: Yes.

A MRS JUSTICE HILL: You say?

MS STACEY: We say that you have regard to the test set out by Kavanaugh J which are not controversial I also say, because they reflect the various legal layers, I think they were described by Mr Watkin has, that the Court must have regard to when considering whether to grant injunctions. And it's fair to say that in such cases Judges have adopted, My Lady, a relatively light-touch approach. Albeit considering what has gone before, because it's contextual, and the nature of the order granted and sought to be continued.

B MRS JUSTICE HILL: Pause there. Taken a relatively light-touch approach because of the context, you said?

C MS STACEY: Yes.

MRS JUSTICE HILL: And?

MS STACEY: The nature. So they will look at what's being asked for. So for example if the order sought is identical then that would be part of the context. If amendments are sought well they would be looked at afresh and sought to be justified. And they will have regard to the relevant principles which are identified in Kavanaugh J's judgment. And that, My Lady, includes considering *Canada Goose*, if there are person unknown. And whether the procedural guidance has been complied with.

D MRS JUSTICE HILL: And when you say the relatively light-touch approach has been adopted, is that because of a concern about developing inconsistent decisions on the same facts at the same High Court level?

E MS STACEY: Yes.

MRS JUSTICE HILL: And it is not a precedent scenario, but a-

MS STACEY: It's a deference to-

F MRS JUSTICE HILL: Deference to consistency.

MS STACEY: Brethren. That have gone before.

MRS JUSTICE HILL: Yes.

MS STACEY: So it's part of the context.

G MRS JUSTICE HILL: Or whatever the equivalent of the sisters are.

MS STACEY: And proportionality. In – back to my point about the umbrella – arising out of the same set of proceedings. So here we have the scenario where the practical reality is it's not *de novo* because it arises out of the same set of proceedings, we say. The application is for an order on the same terms as that which has been granted before, subject to the minor

H

A amendments. Considered by two Judges of the same court. I suppose it would be relevant factor to consider how much detailed consideration has been given which is a debate you are having with my learned friend. But also-

MRS JUSTICE HILL: Two Judges being the interim and then the final order.

B MS STACEY: It is, yes.

MRS JUSTICE HILL: Or the-

MS STACEY: Yes.

MRS JUSTICE HILL: Court 37 and then the interim.

C MS STACEY: First and the review. And the – first hearing and then the review date. And the – return date, rather. Keep saying review in my mind clearly. And the fact of – that the orders which are in place have not yet expired because these applications are brought before, pursuant to *Barking and Dagenham*, but no one lets them lapse, so the applications are pre-emptive if you like. And that approach My Lady, is consistent with the desire not to create inconsistent judgments.

D It's also consistent with the overriding objective which is to ensure that these hearings are – that a Judge maybe three years down the line doesn't have to start from scratch and read back as though it were a *de novo* hearing. And it also My Lady reflects the wordings of the orders which I've taken Your Ladyship to. And as I said, the Master of the Rolls judgment in *Barking* who specifically refers to the duty to keep orders under review. That language doesn't suggest that orders originally granted would lapse and the claimants would need to start again.

E But, and this is the caveat, plainly My Lady that does not mean that the Court has to blindly follow what has gone before. I don't read myself Kavanaugh J in *TFL v Lee* as having been of that view. If there was an error in law, if there's been a change of circumstance or a change of law, then the Court would be entitled and – to [inaudible], to take all that into consideration.

F MRS JUSTICE HILL: Sorry, pause there. If a change of circumstances, that I understand. If a chance of law, that I understand. If an error of law-

G MS STACEY: Based on evidence or something. There would need to be a justification to – I think that the Judge has to look at the matter in the round and has to identify a justifiable basis to depart from the order previously made. And there may be a number of circumstances in which that could arise, say for example the evidence has changed. Or consideration wasn't

A properly given to an aspect or a principle. Or the evidence affects the way in which the principle was previously considered which would change the determination that is now to be made.

B MRS JUSTICE HILL: But that contains two quite different scenarios, if I may say. One is where the evidence has changed. That is clear because that is even consistent with your lightest touch analysis on the review, that if the evidence has changed of course that would fit within the review as you frame it. But if you are also including within your submissions there the proposition that a Judge may take a different consideration of the relevant factors, I think I heard you say that?

C MS STACEY: A different consideration. No, no I don't sorry, that goes to that-

MRS JUSTICE HILL: I need to be clear.

MS STACEY: Yes.

D MRS JUSTICE HILL: About whether you are saying that a Judge at the review hearing who takes a different view, for example of the Article 11 balance or Article 10 balance.

MS STACEY: Yes.

MRS JUSTICE HILL: Is entitled to take a different view to his or her brethren Judge?

MS STACEY: If it's unopposed – if it's unopposed and there is no change of circumstances or change of law then we so no.

E MRS JUSTICE HILL: That is what I thought.

MS STACEY: And that is consistent with the desire for there not to be inconsistent decision making.

MRS JUSTICE HILL: I understand. So when you are submitting different consideration, you mean on the basis of some new material.

F MS STACEY: Indeed.

MRS JUSTICE HILL: I understand, thank you.

MS STACEY: That's scenario one, unopposed *inter partes*.

G MRS JUSTICE HILL: Just pause there. So your proposition, just to be very clear about this, is that on exactly the same evidence, on exactly the same law, a Judge a year later is pretty much bound by what the Judge before has done? So on the evidence that is the same, on the law that is the same, the Judge a year later has got very limited room for manoeuvre?

MS STACEY: Yes.

H MRS JUSTICE HILL: Because provided he or she is satisfied that there is – there has to be some

A new evidence of continuing harm and risk.

MS STACEY: Of course, because it's looking forward.

MRS JUSTICE HILL: Because it is looking forward. But assuming that that pot of evidence stands good, your position is that on the law and on the historic evidence, the analysis that Judge reaches first time around, pretty much stands?

B MS STACEY: Indeed.

MRS JUSTICE HILL: On an unopposed application.

MS STACEY: Indeed, and that is entirely consistent, and I am not here to give evidence, with the manner in which the Judges have dealt with these unopposed renewals since – I call them renewals, since January of this year.

C MRS JUSTICE HILL: Just pause there. And just so I have a sense of it, I have plainly pieced together other elements of similar sorts of litigation on behalf of companies similar to Shell, but when you say that is the position that has been adopted, give me a rough sense of how many other streams of litigation there are? I think I have seen Valero[?], have I seen Esso?

D MS STACEY: You have got the chronology I think, My Lady, in our progress chronology if I can call it that.

MRS JUSTICE HILL: Is this in the one from yesterday?

MS STACEY: Yes.

E MRS JUSTICE HILL: Just bear with me a second.

MS STACEY: I believe, although I don't have it immediately to hand. I had it yesterday and there are references to when renewals, and they are called on renewals on the chronology, were obtained in relation to Valero, Esso, [inaudible].

MRS JUSTICE HILL: So this is in your process chronology?

F MS STACEY: Yes.

MRS JUSTICE HILL: That was handed up yesterday.

MS STACEY: So on page two I think, no it's on the last page.

MRS JUSTICE HILL: So I can see reference on-

G MS STACEY: Oh here we go. First page, so on the first page if you track down to 29 April 2022. This doesn't actually contain all of them but there was an interim injunction granted to Exolon[?]. Sorry, My Lady can I have just a look at this? Oh here we go, yes. So on the second page in January for example, 20 January.

H MRS JUSTICE HILL: Yes.

A MS STACEY: Valero. Saul[?] J.

MRS JUSTICE HILL: But they are the interim injunctions are they not? They are not reviews? Because it says, does it not, interim injunction to be reviewed in February 2024. So that principle of granting for a year seems to be-

B [Crosstalk]

MS STACEY: There was a Valero renewal. It was a renewal. This is wrong. [Inaudible]. There was a renewal of the existing Valero injunction which was granted around the same time as the Shell injunction last year. We can provide those orders if – we’ve got a pack of them, of continuation orders if you like, on the back of original injunctions.

C MRS JUSTICE HILL: And it looks from the previous page on one, the Exolon one, granted by Bennathan J in April.

MS STACEY: Yes.

MRS JUSTICE HILL: Is that the original interim?

MS STACEY: That’s the original.

D MRS JUSTICE HILL: And then you say that the Saul variation in January was on review?

MS STACEY: Yes.

MRS JUSTICE HILL: And what about the Valero one? Is that?

MS STACEY: Again that was – that was I think mislabelled on 20 January 2023 as an interim.

E That was a review.

MRS JUSTICE HILL: Because did all – I am sorry to be [inaudible] but did all three oil companies take action after the April incidents?

MS STACEY: So what happened was, yes, a series of companies did exactly the same thing. As did West Warwickshire in relation to the Kingsbury site. North Warwickshire filed-

F MRS JUSTICE HILL: In or around April 2022?

MS STACEY: In or around – exactly, all around the same time which is why you will recall My Lady at the beginning I said this is the last I think of a series of what I call renewals, by oil companies in respect of the injunctions that they obtained to protect their oil terminals and refineries.

G MRS JUSTICE HILL: But the series is?

MS STACEY: The series is Esso, Valero, Exolon, Shell. The renewals. And there are a few more. Oil [inaudible], one oil and gas, hydrogen gas. I don’t have them but we can obtain them if that would be helpful. And for whatever reason, we are last in the queue.

H

A MRS JUSTICE HILL: And is it your submission that in each of those review hearings in those four cases, that have taken place in 2023, in the Spring of 2023, that in each of those cases the Judges have accepted your submissions on jurisdiction in an unopposed scenario?

B MS STACEY: In an unopposed scenario. In fact Judges – Saul J said well I don't need to trouble myself at the moment [inaudible] that ship has sailed. The real issue is the continued threat.

MRS JUSTICE HILL: But all of those were unopposed?

MS STACEY: Yes. If we – if you would like the orders just so you can see what has gone before, but they are in different proceedings, then we can provide them to Your Ladyship.

C MRS JUSTICE HILL: But they were all unopposed?

MS STACEY: Yes, they were all unopposed. So about to move onto the opposed scenario.

MRS JUSTICE HILL: So all, I am sorry to press you, but these are I have to say more helpful to me than you might imagine because I am very keen to make sure I have understood this.

MS STACEY: Yes.

D MRS JUSTICE HILL: So all of those Judges adopted the Kavanaugh J approach?

MS STACEY: Yes. But I don't believe that there are detailed judgments. They're not every – unfortunately not all of those hearings resulted in-

E MRS JUSTICE HILL: Well if they were unopposed and they were taking it to a review jurisdiction then it is perhaps understandable.

MS STACEY: Exactly. But even if the Kavanaugh J judgment is, to my knowledge at least, and I think it's right to say the only reasoned judgment in respect of a, what I call the renewal.

MRS JUSTICE HILL: And on the basis that that one was in – it was also in February.

MS STACEY: It's in February.

F MRS JUSTICE HILL: It is part of the group then is it?

MS STACEY: It's part of the group; it's in the middle of the group.

MRS JUSTICE HILL: Although that is TfL and not an oil company.

G MS STACEY: Indeed. And National Highways. Oh, National Highways I should also say on Monday of this week. Slightly different because it was a final injunction following Bennathan J's – the appeal against Bennathan J's decision. Cotter J also extended the final injunction in relation to the M25, the London feeder roads and the strategic road network on the same basis. His view, again we need to get-

H MRS JUSTICE HILL: Yes-

A [Crosstalk]

MS STACEY: In fact My Lady-

MRS JUSTICE HILL: It is a final injunction.

MS STACEY: It's a final injunction but the same principle whether there's a continued threat. So

B slightly different because it's a final, but Cotter J is going to be giving judgment, and it may well, and I just lay this down as a marker, contain some helpful to Her Ladyship, indications as to the test in relation to the final at least. Because his view was very much you couldn't go back and redetermine points that had been determined by his brethren Judges. And he made that point several times through the course of the proceedings.

C MRS JUSTICE HILL: In an unopposed scenario?

MS STACEY: In an unopposed – well no it wasn't – there was no 40.9 application but there were named defendants and they were in court and they made speeches.

MRS JUSTICE HILL: But had they been before, had they been named at the earlier stage when

D the-

MS STACEY: They had been named and the summary judgment – so the final injunction was obtained against them on a summary judgment basis. And they didn't file defences. And the Court found that the absence of the defences was a material consideration and on the

E evidence it was justified to grant a final injunction on that basis. So they had the opportunity to engage, they did turn up at various hearings, but what they were saying wasn't really an order shouldn't have been granted but more they would continue to do what they did because it was so important to their protests.

MRS JUSTICE HILL: But was there any fundamental difference between the two stages at which

F Cotter J was looking at the case? So firstly when the final injunction was made, and then secondly when he reviewed it, whoever made the first injunction?

MS STACEY: That was Bennathan J, yes.

MRS JUSTICE HILL: Was the position of the defendants any different?

MS STACEY: No.

G MRS JUSTICE HILL: So in a sense there is consistency then. There is no material change in terms of somebody becoming involved between the two stages?

MS STACEY: No, there was no material change. Because they had been named defendants.

MRS JUSTICE HILL: Yes, so in that sense, although it is not unopposed, it is still different to this

H scenario?

A MS STACEY: I agree.

MRS JUSTICE HILL: Thank you. And do you expect a judgment from Cotter J soon?

MS STACEY: I expect a judgment probably towards the beginning of next week. But I wouldn't necessarily bind myself to that. But he said days rather than weeks, and it was on Monday.

B For completeness My Lady, in relation to where a Judge can depart from what's happened before, there was some debate with Cotter J as to whether alternative service provisions could be amended on the basis of new evidence. And he was satisfied that given the new evidence that was provided to him which concerns difficulties in observing and statistics he was provided with, he was able to amend the pre-existing service provision. But his starting point was very much this has all been decided, a Judge has made this order.

C MRS JUSTICE HILL: Yes, well that is understandable if there is new evidence, and I think there was some was there not here about difficulties with some of the petrol stations?

MS STACEY: Indeed. So that's the – our encapsulation of what we say the position appears to be in relation to unopposed. Does Your Ladyship have any more questions in relation to that?

D MRS JUSTICE HILL: No.

MS STACEY: So far as scenario two is concerned.

Background discussion.

MS STACEY: There's a reference in the bundle to the other injunctions that were renewed, I am told. In Mr Pritchard-Gamble's[?] witness statement at page 971 of the bundle. It's a table. It's an exhibit of Mr Pritchard-Gamble at page 971. Although it would be in F. 971, yes. It's in bundle F4, behind tab F.

E MRS JUSTICE HILL: I am not sure 971 is correct.

MS STACEY: That's the PDF number, I think it's probably 961, it's 10 pages less. Yes.

F MRS JUSTICE HILL: Yes.

MS STACEY: This is what I have in mine, thank you.

MRS JUSTICE HILL: Is it in his witness statement?

MS STACEY: It's in the exhibit to his witness statement, so it's behind -it's F, tab four, page 961.

G MR SIMBLET: What page of the exhibit is it?

MS STACEY: Of the internal. 28.

MR SIMBLET: Thank you, I've got it.

MRS JUSTICE HILL: Mine seems to jump entirely from 933 through to 966, there is just nothing there.

H

A MS STACEY: I was taking Your Ladyship to this table yesterday, do you recall? We were having a debate and you were asking me why I was pulling certain bits out and not others?

MRS JUSTICE HILL: Oh, it is the chronology.

MS STACEY: It's the chronology.

B MRS JUSTICE HILL: Okay, then I have taken it out. So it is the-

MS STACEY: Yes, it's the composite chronology as I call it, and page 961 of that chronology.

MRS JUSTICE HILL: I see.

MS STACEY: That's why, I've-

MRS JUSTICE HILL: No, do not worry. Yes, okay. So 961, I have got January 23.

C MS STACEY: Yes. January 23, you see reference there to renewals. Well renewals are in relation to Valero and Exolon so they were two separate hearings.

MRS JUSTICE HILL: They are the Saul hearings I believe are they not?

MS STACEY: They are the Saul hearings. And then the – I don't think all of them are in this table. No. And the copy of the Valero order is at 434 of the bundle, My Lady. And Exolon is at 474. Yes, so 434 is Valero, Saul J. And 474 I've got Exolon. You've got 474 Exolon.

D In the Valero, if I could ask you just to look at, just asking the review provision, they use the language of review in any event. Oh, paragraph 22 on page 442.

MRS JUSTICE HILL: These are the original orders made in 2022, they are not the reviews are they? So 474 is the-

E MS STACEY: No-

MRS JUSTICE HILL: -Bennathan one.

MS STACEY: No, 434 is the Saul J renewal.

MRS JUSTICE HILL: Well 474 you gave me as well. 434?

F MS STACEY: 434. If we look at that first, that is Saul J. 20 January 2022.

MRS JUSTICE HILL: That's the Valero renewal?

MS STACEY: Valero renewal. And if I – if Your Ladyship would look at 442, paragraph 22, there's provision for reconsideration. But at further hearings. And then 474 is not correct.

G It's not the renewal.

MRS JUSTICE HILL: 442, sorry, you were showing me the renewal provision?

MS STACEY: Yes. 442. Paragraph 22. There's just provision in there for reconsideration at a further hearing to be listed a year down the line. To determine, you'll see there, whether there's a continued threat which justifies is continuation which again is consistent with the

H

A approach that I suggest has been adopted.

MRS JUSTICE HILL: Just while we are looking at this, 19 on this page?

MS STACEY: Yes.

MRS JUSTICE HILL: ‘Any person applying to vary or discharge the order must provide their full
B name and address’. Pausing there?

MS STACEY: Yes.

MRS JUSTICE HILL: That does not seem to be the 24-hour timescale.

MS STACEY: No. I – no.

MRS JUSTICE HILL: Which I think is what, if I may say, has caused some of the practical
C difficulties-

MS STACEY: Indeed, well I’ll address Your Ladyship on that because we’ve had some further
thoughts about that in due – if I may, in due course.

MRS JUSTICE HILL: Well indeed, but also-

[Crosstalk]

D MRS JUSTICE HILL: But also I am going to need some help with, when you come to your
40.9 submissions, the standard wording seems to be, ‘Any person wishing to apply to vary
or discharge must also apply to be named as a defendant’. And that is not what
Mr Simblet’s client wants to do for her own reasons. So I am going to need some help I
E think around this standard sort of wording. Because if in fact there is a proper route to
representations, submissions, under 40.9 that is distinct from joinder-

MS STACEY: Yes.

MRS JUSTICE HILL: -And my reading of the discussion of this interrelationship at the previous
F hearings did not seem to – it seemed, if I may say, quite a few observations made about this
difficult interrelationship or potential interrelationship, but no resolution of the matter.

MS STACEY: No.

MRS JUSTICE HILL: So for example, it looked to me as if at the hearing before Bennathan J for
G example. There was some discussion about 40.9 and joinder. And similarly I think when
your colleague was representing your client, there was similar discussion I think, I cannot
remember quite which one it was, I think it was before Johnson J?

MS STACEY: Yes, it was.

MRS JUSTICE HILL: And I think, and I just want to flag this for you to come back to, looking at
H if you can just pull up – sorry to jump around but the note of the hearing in front of

A Johnson J that I read overnight, 224111?

MS STACEY: 22, sorry?

MRS JUSTICE HILL: Tab 22, sorry. Tab 22G, and then it is 2411 is the-

MS STACEY: 2411?

B MRS JUSTICE HILL: Yes.

MS STACEY: 2411. Johnson J, yes. Got that.

MRS JUSTICE HILL: Yes, and your colleague I think Mr, is it Watkins?

MS STACEY: Watkin.

MRS JUSTICE HILL: Watkin was representing your clients?

C MS STACEY: Yes.

MRS JUSTICE HILL: Your colleague's position was looking at 1.8 of the note, someone directly affected may apply to have a judgment or order set aside.

MS STACEY: Yes.

D MRS JUSTICE HILL: It was not correct that anyone who is affected by proceedings would be entitled to make a submission. They would first have to be joined. Now I do not know whether he meant joined under 40.9 or joined as a defendant.

MS STACEY: Yes.

MRS JUSTICE HILL: And there seems to be elsewhere in, forgive me, I cannot quite remember

E where this point came up, but it might have been in the discussion before Bennathan J. There was some suggestion that somebody made, and I think it might have been in the context of Ms Freeall[?], that even if she did not fall within person unknown, she could be joined as a defendant. So she could – there could be a persons unknown and then her as a named defendant. So I do not have an answer to this-

F MS STACEY: As an interested person?

MRS JUSTICE HILL: I do not understand. I do not know exactly what the submission that was being made was. The point I am making is I do not think there has been a clear determination of the interrelationship between 40.9 and joinder as a defendant. You all

G appear to agree that Ms Branch should not and does not want to be a defendant.

MS STACEY: Well, unless she is – she cannot be a defendant, we say, because – she would be a defendant – if she had committed an act, a breach, then she would be a known person unknown, if you like. A person who is known, and we would be – it would be duty bound on us to identify the circumstances and apply to join her. But as we understand it she is,

H

A and in fact she is saying in terms that she was not planning on doing any of that. So in those circumstances we don't think she should be joined.

MRS JUSTICE HILL: So as far as you are both concerned, there is no question of her being joined.

B MS STACEY: No. And there's no threat because, for the purposes of our application, we have-

MRS JUSTICE HILL: On her-

MS STACEY: -We have to establish that there is a threat, and we would not be able to – on her, exactly. In relation to her. We would not be able to satisfy Your Ladyship that in relation to her, she represents a threat on the face of her evidence. We don't dispute what she says there. So it would be improper for us to seek to join her because there would be no evidential basis upon which we could do so.

C MRS JUSTICE HILL: And I took you entirely off your thread, and I am sorry for that. But you can see why I was looking at these similar provisions.

D MS STACEY: Absolutely. So My Lady, this is why – this is all complicated and because it's all new and evolving, we thought it would help Your Ladyship to understand what we say about approach. So I-

MRS JUSTICE HILL: So I had the Valero renewal at 434.

E MS STACEY: You've got the Valero renewal, that's the only one I think in fact is in the bundle in terms of the renewals. But as I say, I can provide the others if Your Ladyship wishes me to.

MRS JUSTICE HILL: I am not sure it is going to be helpful if they are just simply orders rather than judgments.

MS STACEY: Yes.

MRS JUSTICE HILL: But thank you.

F MS STACEY: So if I can move then onto what we say the scenario is on an opposed?

MRS JUSTICE HILL: So just before you get there, if I take the view that I should not take into account in any way what Ms Branch has said and decide that that has to go on another day, for example.

G MS STACEY: Yes.

MRS JUSTICE HILL: There is not any, what Mr Simblet describes as sort of interim blue touchpaper position where I can be aware of the submissions but not formally take them into account. If I decide there is not that, then you say that this is the approach I take?

MS STACEY: Yes.

H

A MRS JUSTICE HILL: So we are back to where we were on Friday?

MS STACEY: Which is why I started with you – I started on page-

MRS JUSTICE HILL: Right.

B MS STACEY: Exactly. I say there is no middle ground. And where I get to, I will explain my scenario two, but I'll say that means it's necessary, My Lady, for you to determine the 40.9 because you have to determine whether Ms Branch has standing before deciding which route, if you like, to go down. Now, and I'll come to this, but – when making submissions about 40.9 where we may get to is essentially a case management determination in relation to that determination.

C MRS JUSTICE HILL: All right, so tell me your other scenario then?

D MS STACEY: Tell you what the other scenario would be. So if an order which we're seeking the continuation of had been obtained without notice, if you like, and was opposed by someone with standing, and that's the emphasis we place on it. So that's why we need to determine the 40.9. With standing to oppose it, then we accept My Lady, contrary to, to some extent our previous position, the position may be different. We've looked overnight to see whether there's any authority. Certainly there's none in relation to protest injunctions, but we have gained some assistance from a very different context, the [Inaudible], that's the *Gee*[?] extract which I've handed up Your Ladyship, and I've given a copy to my learned

E friend.

The first part is to do with [inaudible] injunctions, you can skip over that. That's just been included for interest purposes, but I have tabbed the relevant page.

MRS JUSTICE HILL: So just pausing there, this scenario is the order had been obtained without notice and was then later opposed?

F MS STACEY: Later opposed by someone with standing.

MRS JUSTICE HILL: Standing in a 40.9 sense?

MS STACEY: Well any – well it could be a defendant. Because 40.9 doesn't simply envisage persons unknown. It envisages a person-

G MRS JUSTICE HILL: When you are talking about standing you mean?

H MS STACEY: Somebody who the Court is satisfied is entitled to make submissions. Whether that's under 40.9 or any other basis. And I – as an aside, Mr Simblet was saying that Ms Branch could make submissions in the absence of 40.9. So you have to be satisfied that she has standing. So in that scenario, as I say there's no authority in this context, but we

A have got some assistance from this extract. So 24.20 says that, 'If the defendant', it's talking about defendants here, but-

MRS JUSTICE HILL: I am looking in *Gee* am I?

MS STACEY: Yes, you're looking in *Gee* in the tabbed page.

B MRS JUSTICE HILL: Yes.

C MS STACEY: 24.20. Paragraph. And it's headed, 'Discharge or variation of an injunction', so that's in a scenario where the injunction has been granted by the Court. 'If the defendant wishes to set aside an injunction [of claim?] without notice by claimant, he must provide to the Judge, he should not try to appeal', that's the Court of Appeal, 'Without having first been before the Court at first instance for reconsideration'. So to that extent, My Lady, we accept that that's what it says there. So there's a reconsideration scope.

D It then goes on to say, 'If the defendant wishes to apply, he should make his application promptly'. And pausing there, I fully accept we're not dealing here with a 40.9, but 40.9 is the route that's been identified by Ms Branch as enabling her to come before the Court and make submissions. So we say it might operate by analogy. But we emphasise the bit about promptness which I'll come back to.

MRS JUSTICE HILL: Yes.

E MS STACEY: And then I think you can skip over the next bit and take it back up at the bottom in the sentence starting, 'Where the defendant'?

MRS JUSTICE HILL: Yes.

F MS STACEY: 'Or a non-party is seeking to vary the injunction, and there are a number of interested parties, it is sensible to proceed by application notice'. For entirely practical reasons I suggest, which I've explained over the page. 'The terms of the variation can then be set out in the application notice, and this may facilitate reaching an agreement'.

G Then it goes on to say this, which Your Ladyship might find helpful, 'The application to discharge the injunction takes the form of a complete re-hearing of the matter with each party being at liberty to put in evidence thus e.g. the defendant may seek to persuade the Court that all the evidence has insufficient risk of a judgment', that's the [inaudible] point, 'And the court decides the application on all the evidence before the Court. This includes evidence of matters which have occurred since the without notice application' etc.

H Now My Lady, so this suggests that one looks at the matter afresh, but one doesn't ignore everything that's gone before. But it does take the form of a re-hearing. So the first

A scenario, we say the light-touch approach applies. So a lower level of-

MRS JUSTICE HILL: I am sorry, forgive me. So the proposition here, and I have not got the authority cited, but the proposition here is in the context of another type of injunction?

MS STACEY: Yes.

B MRS JUSTICE HILL: But a similar set of facts where it is granted on an effectively *ex parte* basis. There is then a party that comes forward.

MS STACEY: Or a non-party I think, to be fair. At the bottom of page, the tabbed page-

MRS JUSTICE HILL: Yes, I was parting the small p. Somebody comes forward.

MS STACEY: Yes. A person, yes.

C MRS JUSTICE HILL: The application to discharge the injunction takes the form of a complete re-hearing of the matter.

MS STACEY: Of the matter.

MRS JUSTICE HILL: Yes, from where do you get the proposition that that is not *de novo*? Sorry, I do not quite follow. Because it does not say review, it says re-hearing.

D MS STACEY: Sure, but-

MRS JUSTICE HILL: I think your submission was-

MS STACEY: The matter in the context when you've got – well this operates by analogy, but here we can't disregard the fact that this order is sought to be continued in the context that it arises, in the same set of proceedings. There have – you can't put out of your mind the fact that Judges have considered it. So if the matter would include a complete reconsideration of everything that's gone before, scrutiny of what's happened before albeit the Court deciding on upon the – what I call the renewal, which was opposed, would, having looked at all of that, decide whether it was appropriate to grant the order or continue the order. Based on all the evidence that-

E

F MRS JUSTICE HILL: I am sorry Ms Stacey; it must be me. A complete re-hearing means you have got an *ex parte* order where no one was there. Someone is now there; you have a re-hearing. Does that not mean a *de novo* hearing? I am sorry if I do not follow why-

G MS STACEY: Well that's what it says here.

MRS JUSTICE HILL: Yes.

MS STACEY: But as I say, this doesn't apply to protest injunctions. I'm making a concession that there may be scope for – well there is scopes it seems for greater scrutiny in circumstances where a party is opposing the injunction being continued. I don't necessarily accept that the

H

A complete re-hearing which is referred to in this passage would require you to ignore everything that's gone before. And not look at for example the attendance notes, the evidence that the Judge had regard to. You'd have to look at all the evidence that's been filed in respect of the original application.

B MRS JUSTICE HILL: But does it not mean though-
[Crosstalk]

MS STACEY: -Relevant to the application that's being made.

C MRS JUSTICE HILL: Yes, on a sensible basis, of course one is going to look at the way in which arguments were developed before and the views that were reached before. But if the position has then been reached that there is now a new person saying, 'Hang on a minute, if I had been here before I would have said lots of different things'.

MS STACEY: They would be entitled to – yes, it's a matter of principle, they would be entitled to do so.

D MRS JUSTICE HILL: Yes.

MS STACEY: But by re-hearing I meant you don't rip everything up and start again.

MRS JUSTICE HILL: No.

E MS STACEY: And require the evidence to be re-served. You look at everything – similarly to, you will recall McGowan, J, Johnson, J, the skeletons were similar. And it looks as though the arguments were run essentially twice. Before both Judges. So presumably, and I wasn't there, but it looks as though, when one looks at the attendance notes, there was detailed consideration by McGowan, J. It came back from Johnson, J, and in fact he looked at a new skeleton but which re-ran the arguments would have been taken to the evidence, and submissions would have been made afresh. Before him. That's what happened in this case, it needed necessarily a-

F MRS JUSTICE HILL: So you say that, and this is more perhaps a pragmatic way of looking at it, that it is not entirely *de novo* because you look back and say well look, I can see for example Article 10 arguments were ventilated even in the absence of Ms Branch or other
G 40.9 person, and I can see the way in which it was run in her absence. And I can now see what she says about it.

MS STACEY: Indeed.

MRS JUSTICE HILL: So-

H MS STACEY: So have regard to all of that; that forms part of the picture. The Court doesn't need

A to take that out of its mind, that is something the Court should probably have regard to.

MRS JUSTICE HILL: So that I understand.

MS STACEY: Yes.

B MRS JUSTICE HILL: But beyond that, if in fact the Judge there hearing the 40.9 person says, 'Well actually, having now heard this new submission, the position is, in my view, different'?

MS STACEY: There's greater scope-

MRS JUSTICE HILL: That Judge in that-

MS STACEY: -In those circumstances, yes.

C MRS JUSTICE HILL: I understand. Thank you. And forgive me then, if the route that the person has got to be a party with a small p is 40.9?

MS STACEY: Yes.

D MRS JUSTICE HILL: Is it your position that while there is a discretion as to whether to recognise somebody under 40.9 and while the Judge has to be satisfied before that exercise of the discretion takes place that they are directly affected.

MS STACEY: And there's a good – the two gateways.

MRS JUSTICE HILL: Yes, however you frame it. If there had been, by Rule 40.9, they are entitled to a set aside. That is what 40.9 says on its face. Vary or discharge an order.

E MS STACEY: I mean the slight procedural difficulty is that 40.9 – I'll come to 40.9. It seems to envisage the setting aside of an order that has been made.

MRS JUSTICE HILL: Yes, whereas here you are applying for a new order.

MS STACEY: So there's a procedural wrinkle there.

MRS JUSTICE HILL: Yes.

F MS STACEY: So I will come – can I come to 40.9, but just to follow through the analysis on scenario two where it's opposed, if Your Ladyship accepted that there was a 40.9 application properly made which was to be heard in relation to an order of the court to set aside or vary. And then there's greater scrutiny as we've discussed. What that means,

G My Lady, is that the test in *Tj/L* are not – don't come out of the consideration. They are still the relevant test because they are the identified tests which reflect the authority in relation to interim injunctions. But you also look at the submissions which the Court has allowed that party to make, pursuant to the 40.9 application. And the reason I say it in that way is that

H when I come to 40.9 it's relevant to consider the merits of the submissions because that's

A part of the threshold.

MRS JUSTICE HILL: Well that was the basis was it not, of as he then was His Honour Judge Cotter refusing the 40.9 admission in [Inaudible]. Was that you may be in as a directly affected party but ultimately the merits are not with you.

B MS STACEY: And that's what – that's the reasons I'll come onto we say the gateways. We are prepared to concede that she is a person directly affected when one applies a generous interpretation of the words of 40.9 as per Bennathan J, and Ritchie J, but we say there are not good points. And the reason we say, and we'll come – it's slightly circular, My Lady, but the reason we say they are not good points which I'll expand upon, is that detailed
C consideration was given, the claimant's counsel went to great lengths to make sure that the points were properly ventilated.

They were properly considered, the known error, the evidence more than satisfied the risk tests and the harm tests. There's evidence of continued threat which I don't believe is something that's been taken issue with. Bennathan J's order was, as I say, stripped down to
D its bare bones and is plainly, we say, appropriate balanced. There's no issue with the stations order. And because of all of that, we say there's no good point and the test that Cotter J identified in the *Gees* case is whether there's a reasonable prospect of the non-party being able to secure a different order. That's the test, that's the gateway test of
E merit.

MRS JUSTICE HILL: It becomes a little circular though does it not?

MS STACEY: It does become circular, yes. And as we keep saying, we are where we are, but perhaps it's been helpful Your Ladyship, I have taken you through a large chunk of the
F evidence. Not all of it, but in the way it was approached. So that's – those are the two scenarios, but where we get to My Lady, in relation to all of that, is that you have to deal – it is necessary to deal with 40.9, and Ms Branch's standing first.

And perhaps then I can tell you where – I can give some indications, but where we are on that is as follows: We say there's no right for – she has no right to make an application as a
G non-party otherwise in 40.9, in the absence of Mr Simblet having identified any other basis. It's not right that any person can come to court and make any submissions in the absence of a procedural book.

And so far as the 40.9 application is concerned, we oppose it on the basis that we say firstly the gateway isn't met. And the gateway I take from *Breen*[?] at paragraph 43.

A MRS JUSTICE HILL: Is that the factor that Ritchie J listed?

MS STACEY: Yes. Well no. That's discretion. So gateway is dealt with at 43. Factors come after gateway.

B MRS JUSTICE HILL: Forgive me, it has been over 24 hours since I look at this, so lots has happened since then. So 43.

MS STACEY: And we have to take it in two stages.

MRS JUSTICE HILL: You do.

C MS STACEY: Firstly the gateway. And the gateway, according to Ritchie J, and this is an expansion on what Bennathan J says but deals with two things. First, directly affected. And we can skip over that because we're prepared to concede that that box is ticked. Although the fact that it seems slightly tenuous, certainly in relation to [Tower and Haven?]. Because we'd say that Ms Branch has no right to protest in a way that involves trespass. And as I said yesterday was a slow march past the Tower involving 250 people which wouldn't engage the provisions of the injunction. There's no reason why Ms Branch

D couldn't do that without-

MRS JUSTICE HILL: But for present purposes you concede directly affected across all three?

E MS STACEY: Let's assume. We accept directly affected in relation to – in relation to stations. Not in relation to Tower. And not in relation to Haven on the basis that those are purely trespass injunctions, if I can call it that.

MRS JUSTICE HILL: I see.

F MS STACEY: But so far as good point is concerned, we don't accept the points that challenge our good points in terms of there being a reasonable prospect of her being able to secure a different order, and My Lady you get that test if you go back in the judgment to paragraph 23. Not 23, I'm so sorry, 38.

MRS JUSTICE HILL: Yes.

G MS STACEY: So forward in the judgment, exactly. Cotter J. And what essentially this requires the Court to do is form a – it's almost – it's basically this is not an appeal obviously, and I don't want to use that language because I've accepted that there can be a re-hearing, but it's akin to admission for appeal application when one considers the merits of the points that have been raised before allowing that person through the gateway. And in relation to that... Yes, not [inaudible]. So when I said we accepted the re-hearing, as my junior points out, I haven't entirely accepted that, that it's entirely *de novo*. I told Your Ladyship that one

H

A doesn't disregard everything that's gone before. We've had that. The *Gee* test, let's call it that.

MRS JUSTICE HILL: Yes.

MS STACEY: So far as the merits of the point are concerned, My Lady you have our note.

B MRS JUSTICE HILL: Just pausing there. Before we leave *Breen*, the factors he sets out-

MS STACEY: The factors come on discretion. I think I need to complete good reason first. You can keep *Breen* open.

MRS JUSTICE HILL: Well let us perhaps do it in another way if you do not mind?

MS STACEY: Yes.

C MRS JUSTICE HILL: Because obviously your submissions on the merits are directly relevant to whether she has a good point or not.

MS STACEY: Yes.

MRS JUSTICE HILL: But what do you say about the *Breen* factors?

D MS STACEY: So, so far as the *Breen* factors are concerned, the first point we make is the list isn't definitive. And he doesn't seem to suggest that it is. Nor should it be because the Court has a general discretion. 40.9 expressly provides that a non-party may, without – there's an overarching discretion, one has to consider all the circumstances.

MRS JUSTICE HILL: Yes.

E MS STACEY: So other than looking at specific [inaudible] factors, we rely on three main points.

MRS JUSTICE HILL: And you have had sight of her most recent statement addressing the factors?

F MS STACEY: I have. Yes. Let me address those then before I refer Your Ladyship to the ones that we place reliance on in addition. It's page five of her statement. So factor one, we don't dispute her position in relation to. Factor two, well we say that she does, because given the range of her submissions or the extensive nature of the submissions which are sought to be advanced, which mount a wholesale attack on the very basis on which the injunction was granted. From the Human Rights points to the *Canada Goose* requirement, to the underlying cause of action across the board to the terms of the order.

G And My Lady to a point specifically made in the statement relating to the environmental description whereby Ms Branch is – she's a member of Extinction Rebellion, it seems to us that she has no standing to make arguments on behalf of non-environmental protestors in circumstances where she herself is a member of Extinction Rebellion only. But that's an

H

A indication of the range of submissions that she wishes to make which is tantamount to her seeking to control the litigation on behalf of all persons unknown, so we don't agree with what's said about factor two.

MRS JUSTICE HILL: Yes.

B MS STACEY: Factor three, would it affect her. Well we dispute this too because given the narrow confines of the Tower and Haven injunctions which only prevent activity which is plainly trespass or nuisance, private law where a claimant has Article 1, Protocol 1, rights, we don't accept that she has any entitlement to protest in that way. And thus her rights wouldn't be affected. There's no freedom of forum. That's [Inaudible] which I've taken Your Ladyship to before.

C And so far as the stations are concerned, well she has no right to protest in the manner described with the description of persons unknown, with the intention of disrupting and causing economic harm to the claimant. Again, no freedom of forum. So given the way in which the – we say the relatively narrow confines of the [inaudible] which are plainly unlawful, we don't accept that the existing injunctions does affect her property rights. And there's a recital My Lady you will recall, on the base of the orders, which makes it clear that they are not intended to catch lawful protest.

D Factor four we don't dispute. Factor five, we don't dispute. Factor six, well this does involve persons unknown and so we don't dispute. Factor seven, we don't dispute. Factor eight, we do dispute, but I'll come back to this because the factors we specifically rely by way of discretion on, delay, prejudice resulting from the way in which this application has been brought, and merit. Those are the three additional discretionary factors which I'd ask for Her Ladyship to have regard to.

E F MRS JUSTICE HILL: Delay, prejudice and?

MS STACEY: Delay, prejudice and merit. If merit – it not with me on merit in terms of excluding her because she doesn't get through the gateway, I say merit in the – the merits of the points comes back into-

G MRS JUSTICE HILL: Come back in a discretion.

MS STACEY: Come back in a discretion. Yes. So delay. I've handed up, My Lady, a chronology?

MRS JUSTICE HILL: Yes.

H MS STACEY: The first two entries, just so I can explain this document. It's a chronology of

A service on HJA who are Ms Branch's solicitors and were Ms Branch's solicitors last year when she put in the skeleton argument for the Tower proceedings. The first two entries relate to service on HJA on behalf of Ms Freeall so that – you can probably skip over those two which is why they're not highlighted.

B But 14 February 2023 is where documents were specifically sent to HJA for Ms Branch. And pausing there I should say that there was no obligation on my client to do so because she's not a person who is named, and the alternative service provisions only require service in the way set out in the order. But they took a view and they decided out of an abundance of caution, belt and braces, to serve documents on people they knew about. Which is why
C these documents were sent to HJA for the attention of Ms Branch.

MRS JUSTICE HILL: 14 February is a reference here to the change of solicitors on the petrol stations claim.

MS STACEY: Yes. So on 14 February, that was sent. 16 February, application notice to petrol
D stations. That was the application to extend, and that contained the documents. Simply the application. That contained simply the application. And then on 28 February there's the application for joinder. And then you'll see on 6 April they were sent all the documents in relation to the petrol station proceedings, and they are listed out there at 6 April. So this is the recent knowledge.

E MRS JUSTICE HILL: And so where sorry the entries on here after 14 February all relate to the petrol stations claim?

MS STACEY: Yes.

MRS JUSTICE HILL: Is that because there is a focus on that perhaps in Ms Branch's evidence?
F Or is there not evidence of service of the parallel documentation in relation to Haven and Tower on her?

MS STACEY: I'm told it was – yes. First entry, right at the top of the page, My Lady. Letter from HJA to CMS requesting certain petrol station documents. So those were requested at least on behalf of Ms Freeall.

G MRS JUSTICE HILL: I see.

MS STACEY: And a decision was taken out of an abundance of caution because they knew about Ms Branch and her involvement previously. And the interest that she had expressed in the context of other proceedings that she had also been a client of HJA so they'd send documents-
H

A MRS JUSTICE HILL: But her skeleton argument was lodged in relation to either Haven or Tower was it not?

MS STACEY: I know. But that's a Shell – that was a Shell injunction. Can I just get some clarity?

B **Background discussion.**

MS STACEY: So I'm told Tower, Ms Branch extracted herself, I don't think she – this is disputed in fact, it reflects the statement because Mr Smith decided to make the submissions. So as far as Tower is concerned-

MRS JUSTICE HILL: I understand that.

C MS STACEY: -She stepped back. But because she had been instructed – she had instructed HJA at that time, that's the link. And HJA had specifically requested documents on behalf of Ms Freeall in relation to the petrol stations. A view was taken by my solicitors that it would be sensible to ensure that Ms Branch has the relevant documents in relation to petrol stations.

D MRS JUSTICE HILL: And presumably the application for joinder on 28 February that was served, and the sealed order reflecting joinder of the applications if not the cases, indicated that the other two were looking to be extended, is that right?

E MS STACEY: Yes. So you've got the joinder for all three proceedings. The application, I can take you to that. It's-

MRS JUSTICE HILL: It seems clear that the Haven and Tower were up for renewal as well?

MS STACEY: Yes, it's the first bundle. I'll just get that for Your Ladyship.

MRS JUSTICE HILL: I am not sure 49-53, that is the certificate of service.

F MS STACEY: No. That's in terms of – that's the evidence of service, My Lady, but that's not supposed to be the page reference for the application itself which I'm trying to find for you. 34 I think.

MRS JUSTICE HILL: Yes, 34 is the-

G MS STACEY: I'm grateful. Yes, 34 will decide whether or not to continue the injunctive relief granted. That's the order I took Your Ladyship to yesterday. And you see on page 35-

MRS JUSTICE HILL: This is the narrative around all-

H MS STACEY: Just the narrative. So I was dealing with delay. I've handed up that chronology to explain what Ms Branch knew about when – more recently, but of course she also, you have the skeleton argument that she filed in relation to Tower, so she had previous knowledge.

A And as explained yesterday, the documents were put up on the website in relation to all three proceedings, as per the orders. And therefore we say that she could well have, and should have, brought an application under 40.9 to challenge the order that had been made 12 months ago. Well before now. And we also say My Lady that it's an inappropriate use
B of the 40.9 procedure to bring an application so late just before expiry of the order which she is seeking to have set aside.

And if I can expand on that? I made the point to Your Ladyship, I called it a wrinkle that needed to potentially ironed out, that the purpose of 40.9 appears to be designed to capture a non-party which may include a person unknown who is directly affected and discovers an
C order has been made, who wishes to challenge it, to challenge that order as made. That seems to be the purpose on the face of the language of 40.9.

And as I said, Ms Branch has been aware of this order for over a year. She could have challenged the order but did not do so. Her evidence I think is that she decided to-

D MRS JUSTICE HILL: So over a year, where do I get that from?

MS STACEY: Well she knew that Tower – she put in the skeleton for Tower, so she knew of the Tower proceedings.

MRS JUSTICE HILL: Oh from the – the date of Bennathan J order/

MS STACEY: Exactly. Sorry, the date of Bennathan J order, exactly. Which is give or take a year
E from now.

MRS JUSTICE HILL: Yes.

MS STACEY: And the reason I say it's inappropriate is the affect of leaving it so late is essentially the claimant has been essentially ambushed just before expiry with wide-ranging submissions which risks derailing the time estimate and puts the existing orders at risk of
F expiry. Now you will recall that Johnson J, My Lady, declined to deal with Ms Freeall's submissions in relation to stations because of the urgency, and said it would be appropriate for them to come back. That's analogous to where we are here because-

MRS JUSTICE HILL: Well, and she was unrepresented.

G MS STACEY: She was unrepresented. But there was an urgency factor. And the prejudice, he said, well there would have been prejudice because she could always come back. In the event she didn't. But here we're in a similar type of situation where we applied to extend on the basis of our case that there continues to be a real and present threat which justifies the protection remaining in place, and the harm which would be eventuated if it wasn't, if
H

A the protection was lifted. And it's inappropriate, we say, to derail that application in the manner that's occurred, by extensive submissions having been brought in so late in the day. Now reliance, My Lady, is placed on the 24-hour provision. But the first point I'd make is that 40.9 contains no such time provision. It's a normal procedural rule, and we say it envisages promptness as part of the discretionary element. And I referred Your Ladyship to *Gee* text as a matter of essential procedural fairness, one would expect such applications to be made promptly. So it's open to Your Ladyship to have regard to that, and you should have regard to that because it's a very relevant factor in deciding whether or not to exercise your discretion in favour of the application.

B
C MRS JUSTICE HILL: But is there not an argument that there is a general principle and there is a specific order in this case? So there may well be a general principle that requires fairness etc. but when there is a specific order that says anybody who wants to set this aside must give 24-hours' notice?

D MS STACEY: Yes, but that specific order, I was about to come onto that. The 24-hour provision is intended to catch people who would be suitable for joinder. It specifically says so. It says, 'Any person applying to vary or set aside but give their name and address and be joined'. Let me just look at the petrol stations example.

MRS JUSTICE HILL: Yes.

E MS STACEY: So I've got that in the new bundle in fairness as well. The older order. Page 2493. Actually no, that's not the case. No, that's wrong My Lady, that's paragraph six. Paragraph five is in more general terms.

MRS JUSTICE HILL: Yes.

MS STACEY: But then paragraph six goes on to say, do you have that?

F MRS JUSTICE HILL: Yes.

MS STACEY: So they're to be read together. Paragraph six goes on to say that, 'Any such person must provide their full name and also apply to be joined as a named defendant'. So they envisage, My Lady, a situation where a person is at risk of being joined on the basis that they are identifiable – or as a person who should be joined because they are falling within the description of person unknown.

G MRS JUSTICE HILL: But is that right-

MS STACEY: For joinder.

H MRS JUSTICE HILL: Or is it – in light of what appears to be a lack of judicial resolution of the

A tension between 40.9 and joinder?

MS STACEY: Yes.

MRS JUSTICE HILL: Is that right?

MS STACEY: Well that's what – certainly on the face of the two paragraphs.

B MRS JUSTICE HILL: No, forgive me. I can read them. I can see what they say. But is the wording of six a considered position? So is the wording of six based on the proposition that if you are applying to vary you should become a defendant? Because is there not a recognition, as there is evidenced by Ms Branch's position that someone can be in the first part of six but not the second?

C MS STACEY: Yes, My Lady, I'm not saying that five and six to be read as to preclude a 40.9 application.

MRS JUSTICE HILL: Okay?

MS STACEY: All I'm saying is the 24 hours provision applies in the context of person who are risk of being joined as named parties because they would be falling within the description of persons unknown.

D MRS JUSTICE HILL: Is that not more procedurally problematic? That someone who is actually become a defendant only has to give 24 hours' notice?

MS STACEY: But she has to give 24 hours' notice-

E MRS JUSTICE HILL: Because that brings with it all the bells and whistles of joinder does it not?

MS STACEY: But she wouldn't be joined unless and until the application was heard.

MRS JUSTICE HILL: No, but if the standard order is saying you can apply to become a defendant on 24 hours' notice, that brings with it greater procedural consequence than someone who applies under 40.9. It must do, because as Mr Simblet submits, 40.9 is a temporally limited provision, I want to make submissions but I am not going to be joined.

F MS STACEY: Yes.

MRS JUSTICE HILL: But someone who is saying I want to be a defendant, that brings with it the obligation to place in a defence and all sorts of other bells and whistles and costs risks and all sort of other things. So I am just not sure your submission is helping me because...

G MS STACEY: All paragraph five is saying is you have to make the application; you have to give notice that's not less than 24 hours in that particular context.

MRS JUSTICE HILL: Yes, but if someone can do that as a defendant, as a prospective defendant, to argue that therefore some more rigorous test should apply to somebody who is not even,

H

A in inverted commas, applying for that.

MS STACEY: Yes. But then I suppose-

MRS JUSTICE HILL: It seems a little counterintuitive.

MS STACEY: Perhaps, but if such an application were made, then as a matter of case management

B discretion, one would consider the application and consider when it was to be heard and so forth. Just because you've made it within 48 hours, or at the 24-hour deadline, doesn't mean the application would be heard immediately thereafter. So-

MRS JUSTICE HILL: No, and I suppose, just to try and think about this sensibly.

MS STACEY: You have notify properly, and then-

C MRS JUSTICE HILL: But also it is not within 24 hours of the hearing.

MS STACEY: No. It's not within 24 hours of the hearing. Quite. So you'd made the application and then you consider the application and you list it appropriately. Whereas here we say the first point is that this deals with a different situation, and I take Your Ladyship's point that it would be case managed appropriately. But the 40.9 situation doesn't contain-

D MRS JUSTICE HILL: Is that right? What does it mean? I am sorry to go back to this. I mean I suspect what was – what happened is that – well I hope that the consideration that is now given to these issues might look – might lead to the wording of these provisions being thought about a bit more. But under five, 'Any defendant, or any person affected, may

E apply to discharge upon giving not less than 24 hours' notice'. So that means there must be a 24 hour gap between them saying I want to discharge, and them going to Court and saying please discharge. So it is 24 hours before a discharge hearing.

MS STACEY: Well not necessarily because they can – or what they-

MRS JUSTICE HILL: Where is the 24 hours attached to? Because it is not linked with the review

F hearing?

MS STACEY: It's notice of the hearing.

MRS JUSTICE HILL: Yes, but notice of the – 24 hours until what? It must be until they go to court to actually get the discharge.

G MS STACEY: Of their application. Well that's the way I read it. 'May apply to vary at any time upon giving not less than 24 hours' notice of the application'. So you make the application to the Court, you notify within 24 hours that such application is to be made, and then comes before the Court and the Court decides when that application is to be listed for hearing. So it's not without – it's not-

H

A MRS JUSTICE HILL: Well it may be, or the Court may say I am willing to discharge here and now.

MS STACEY: Well that would depend on the circumstance, yes.

MRS JUSTICE HILL: But there have been 24 hours-

B [Crosstalk]

MS STACEY: -Case management situation-

MRS JUSTICE HILL: I agree.

MS STACEY: Just because you make the application doesn't mean – yes.

MRS JUSTICE HILL: Does your order not, as written at five, irrespective of the complexity of

C joinder at six, say someone can apply to discharge this order and go to Court to do that as long as we are told 24 hours before they do that.

MS STACEY: Come before the Court.

MRS JUSTICE HILL: Yes.

MS STACEY: For that purpose. But having given notice to the claimant.

D MRS JUSTICE HILL: 24 hours.

MS STACEY: Yes. But a claimant can pitch up and say well it's too complex, we can't deal with it here and now.

MRS JUSTICE HILL: Of course, but conceptually.

E MS STACEY: Absolutely.

MRS JUSTICE HILL: There is nothing in five to preclude-

MS STACEY: No. But that's a person – then six provides that that person should also be obliged to be joined at the same time.

MRS JUSTICE HILL: Yes, but I think we now agree that someone can be a 40.9 candidate

F without joinder?

MS STACEY: Yes. But five and six deal specifically with people who should be joined. So if one looks at-

MRS JUSTICE HILL: I am not troubled by joinder because Ms Branch is not being joined, you all

G agree that.

MS STACEY: No, exactly.

MRS JUSTICE HILL: So looking solely at five, irrespective of the review hearing listed today.

MS STACEY: Yes. Yesterday and today.

H MR JUSTICE HILL: Ms Branch could have given no more than 24 hours' notice at any point in

A the last year, and secured a hearing the following day at which she could invite the Judge to discharge the order. That would be consisted with this.

MS STACEY: But only if she applied to be joined. According to this. Because that's what the order says. Bennathan J decided that he could vary this provision because, if you like-

B MRS JUSTICE HILL: Of the Chamberlain requirement to a similar effect?

MS STACEY: Yes. Exactly. But so the point I would simply make is 24 is dealing with this – the scenario where specifically there is to be a joinder, and Ms Branch has indicated she doesn't want to be joined. And she can't be joined.

C MRS JUSTICE HILL: It is an indication though is it not? It is an indication of the way in which the order was anticipated to work?

MS STACEY: Yes.

MRS JUSTICE HILL: That if there was somebody who wanted to become a defendant-

MS STACEY: Yes.

D MRS JUSTICE HILL: They could still get a hearing within 24 hours of giving you notice?

MS STACEY: They could, but My Lady I say – I've made my first point which is a different context. Albeit – so joinder, but the second point is yes it says 24 hours, but in this case Ms Branch is applying under 40.9 not wishing to be joined, having had knowledge. So the person that is envisaged by five and six isn't, I suggest, necessarily somebody who has had knowledge of the order being on foot for the length of time that Ms Branch has, making the application on essentially the eleventh hour, just before enquiry.

E And back to 40.9 being a general procedural rule which would envisage promptness as a matter of discretion, the mere fact that the order provides for 24 hours' notice doesn't dispense, we say, with the need for you to consider whether or not the way in which she made the application against the backdrop of her knowledge, is appropriate.

F And what's happened here, and I'll come to this if you're with Ms Branch on this 40.9 and dealing with it on a case management basis, we would say that it can't possibly be dealt with at the review hearing because we're on day two at 10 past 12. Had she made an application on 28 February when she was served the documents, and notified us of such application, we would have applied for more time. We would have framed our submissions differently. We would have carried out the research that we've been scrambling around to carry out in the course of last night-

G MRS JUSTICE HILL: But are not – I am sorry to interject, I mean we are where we are in terms of

H

A the difficulties. But by setting up an order that gives people 24 hours, you are – are you not inviting this risk if I may say?

MS STACEY: But only for those who are about to be – it talks about joinder-

B MRS JUSTICE HILL: [Inaudible] the defendants it is more problematic, but by setting up an order that has a 24-hour provision and then timetabling these very complex hearings based on the assumption-

MS STACEY: Yes.

C MRS JUSTICE HILL: Because you make the time estimate on the assumption that no one is going to turn up, no one is going to object, this is just going to be – so you say I need a day and a half just for me.

MS STACEY: My Lady-

D MRS JUSTICE HILL: If you list it on that basis, that you know there is in place an order that would permit someone to give you notice, as they did here, one day before, that will then stymie that time estimate. The structure of these orders seems to me inviting this problem. Forgive me, that is a separate point. But I think there is a responsibility and there certainly would be, if I am looking at this order in future, to case manage this, if I may say, more proactively, or rigorously or better, whichever word you want to use. Because if you have that 24 hour provision you are inviting this problem.

E MS STACEY: Well I see that, but perhaps there's a duty to join people who are about to fall into the category of the persons unknown. So that's – the fact that we accept that risk, if you like, in relation to such persons, is in recognition of the fact that-

[Crosstalk]

F MRS JUSTICE HILL: But the order [inaudible] not only be joined, but to be joined, for the purposes of trying to set it aside.

MS STACEY: Yes. So to hear from that person, who is at risk of being joined, but Ms Branch we say isn't at risk of being joined.

G MRS JUSTICE HILL: It is the same – it comes back directly to that point. Because the point is that the order permits somebody who wants to set aside this injunction to give you nothing more than 24 hours' notice. So by assuming when you list these that no one is going to attend, knowing there is that 24 hour permission which makes it permissible, you may say wrongly because she has had notice. If she only found out about the injunctions last Wednesday or Thursday, if she was not aware, she would still be within that 24-hour rule.

H

A MS STACEY: She would, but I wouldn't be able to argue, as a matter of discretion, and you maybe wish to take the fact of her knowledge as a-

MRS JUSTICE HILL: I agree, but by your client selecting a time estimate that assumed no contest, I think there is a risk.

B MS STACEY: Well I see that, and I – the privilege [inaudible]. And I can't avoid the fact that they're there. Yes, well. We're back to the fact that this is not an application under paragraph six or five, it is an application under 40.9, and it is an application under 40.9 as I say to challenge, and this is the line – the first line of Ms Branch's witness statement, to challenge an order that hasn't yet been continued. So pre-emptive if you like. Back to the
C wrinkle which I say 40.9 – 40.9 seems to assume that a non-party is seeking to challenge an order that's already been made. Set aside an order that's-

MRS JUSTICE HILL: But is the thrust of what is said in *Barking* not that that is the only way in for someone like her? I mean I agree that conceptually a point taken took an entirely
D narrow reading of 40.9, all Ms Branch can do is invite me to set aside the orders already made.

MS STACEY: Yes.

MRS JUSTICE HILL: But the clear thrust is it not of the reference to 40.9 in *Barking* is that as you have conceptualised these injunctions, they are to be reviewed and continued, and her role
E in that 40.9 process is therefore inevitably looking forward.

MS STACEY: It may be a question of when the application was made. And the manner in which it's made. So can you make a 40.9 application seeking to discharge an order pre-emptively? Just before a continuation? And thereby – it's the urgency point really in Johnson J; can you entertain such an application or do you require it to be dealt with on a different
F occasion?

MRS JUSTICE HILL: But do you say as a matter of construction of 40.9 that she has no *locus* in a future-facing argument? She has no *locus* on what happens beyond 2 May?

MS STACEY: I say as a matter of your discretion dealing with – if she's got through the gateway, if you accept she's got the good point, she gets past the good point argument. I say that as a
G matter – you're being asked to entertain the application here and now, as I understand it, at this hearing.

MRS JUSTICE HILL: I think so.

MS STACEY: You are, yes. It's said in terms. So as a matter of your discretion, the delay point is
H

A a factor which we say should weigh heavily in the balance in the objective-

MRS JUSTICE HILL: No forgive me, it is more a drafting point or a construction point. 40.9 provides that someone can apply for an order that has been made to be set aside.

MS STACEY: Yes.

B MRS JUSTICE HILL: Does that mean that she does not have standing to object to the application of a future order?

MS STACEY: Well conceptually-

MRS JUSTICE HILL: But that is what I am saying.

MS STACEY: The variation. We're asking for a variation. So we're saying you don't need –

C necessarily wrong to new order, so it can be a continuation of the existing order if you're with us on variation. But that variation hasn't yet been made. And on the face of the application, I mean it won't be done the head of opinion that – it's important because it comes back to the timing. She's asking to – she's seeking to challenge pre-emptively the continuation that we're seeking that the Court hasn't yet made.

D MRS JUSTICE HILL: So you are saying effectively that that is another legal-

MS STACEY: It's another factor.

MRS JUSTICE HILL: -Linguistic reason for shutting her out?

MS STACEY: I am. And it's connected if you like with the timing point, the delay. And the

E prejudice because all of that amounts really to the same thing. She could have done it before; she's done it at this very late stage in circumstances where she could have done it before. Thereby bounced us into a situation which we were ill-equipped to deal with. And that doesn't seem to fit very neatly with 40.9 which seems to envisage, My Lady, somebody finding out about an order that has been made.

F MRS JUSTICE HILL: Like an insurance company or a-

MS STACEY: Like an insurance company, exactly. And coming to Court and therefore explaining their position and seeking to set it aside. But we've had 12 months here. Not somebody, knowing about the order, deciding not to do anything about it, which is

G essentially because I'll see whether it's going to be continued or not. Not doing anything once they were served with the documents. And on the Friday before the Tuesday serving a 35-page skeleton argument making a number of points which attack the whole basis of the injunction having been granted in the first place. All of that, My Lady, is-

H MRS JUSTICE HILL: It is almost then effectively, if one were to take 40.9 on its face, that I have

A got two entirely separate applications before me. I have got 40.9 saying set aside everything that went before. And then I have got you saying oh contraire, continue it with a minor variation.

MS STACEY: Well that's – yes. Because the 40.9 – yes, the only order that's currently in place is the order of Johnson J-

B MRS JUSTICE HILL: So then are we not faced with a scenario where we have got this procedurally challenging world, if I can put it as neutrally as possible, of persons unknown injunctions, and then we have got this rather square position of 40.9 and the round hole of the persons unknown. And we are trying to marry them up?

C MS STACEY: Yes.

MRS JUSTICE HILL: And the senior Courts so far have identified 40.9 as the way in for someone like Ms Branch. In the context of the review jurisdiction.

MS STACEY: Understood. But in an – yes. In the context of the review – Well let's look at *Barking* and just see what they say.

D MRS JUSTICE HILL: Yes. It is in our bundle I think.

UNKNOWN COUNSEL: It's in our bundle and it begins at 41.

MS STACEY: Tab three, thank you.

UNKNOWN COUNSEL: And there's several references to it.

E MRS JUSTICE HILL: Yes, I have got here Master of the Rolls at paragraph 89. Yes.

UNKNOWN COUNSEL: There are other references, My Lady, to 40.9 as well as that one.

MRS JUSTICE HILL: Are there?

UNKNOWN COUNSEL: Yes. I can find them.

F MRS JUSTICE HILL: Right. Person who is not a party directly may apply, so that is general – does not say when.

MS STACEY: 83 is another reference, My Lady, going back. Page 63. And 62 is the other reference.

MRS JUSTICE HILL: Sorry, so 83?

G MS STACEY: So 62, 83 and the paragraph 89. Those are the three.

MRS JUSTICE HILL: 63 did you say, no?

MS STACEY: 62.

MRS JUSTICE HILL: But all-

MS STACEY: So none of those-

H

A MRS JUSTICE HILL: With the greatest of respect to those who use these words, all they do is recount the wording of 40.9.

MS STACEY: Exactly, they. What they don't do, My Lady, which is why I wanted to look at them, is they don't suggest that in the context of a review, a time limit review, 40.9-

B MRS JUSTICE HILL: No, I mean I think the-

MS STACEY: So it comes back to the wording, the language of 40.9. The application needs to be made once an order has been made, that person can apply and have it set aside. Which is back to the submission I was making to Your Ladyship previously. Which is why started by saying this is an improper use of the 40.9 procedure.

C MRS JUSTICE HILL: So presumably what it boils down to is this? If I believe that Ms Branch is in under 40.9, on your submission the limits of her involvement are in relation to the past order?

MS STACEY: Yes.

D MRS JUSTICE HILL: And you say for all the good reasons you have taken me to in the skeleton, said that those orders were properly made. Number one.

MS STACEY: Exactly.

E MRS JUSTICE HILL: Number two, if she is under the 40.9, because of the linguistic construction of the rule, quite aside from the case management issues around delay, on a proper construction of the rules, she needs to wait until the injunction is made afresh, reviewed or renewed or whatever we say, and then come back. Is that where we have got to?

MS STACEY: That's where we've got to. And I accept [inaudible] on the basis of the language, yes. It's not appropriate to deal with it here and now because it prejudices the expiry and I don't – my client's are keen to ensure the continuation of-

F MRS JUSTICE HILL: Unless the other intellectual way through it is that you go back to your very first position which is that this is one order that was made, and I am applying for it to be extended.

MS STACEY: Yes.

G MRS JUSTICE HILL: And therefore there is a distinction because she is trying to set it aside in the extension process, does that make sense?

MS STACEY: It does. It does.

H MRS JUSTICE HILL: And that is the – because to be fair, there is a bit of a cake and eat it position is there not? Because you are saying this is an extending process, for general

A purposes. You are saying this is a review.

MS STACEY: My Lady I accept that, but that's why I said the variation has not yet been made. Which is true, I think technically speaking. We are saying it's a continuation of the positional basis, but I don't want to pre-empt anything, I don't want Your Ladyship to [inaudible] so unless I'm told the variation is gone to, the only order we have is the order that we're seeking which one is the subject of the applications. So yes, there is temporal difficulty.

B So I just remind Your Ladyship that we're dealing with this in the basket of discretion at present. Having made the point on good reason for the gateway. So discretion we rely on firstly delay, secondly prejudice. If the matter were dealt with in the manner that's been suggested in terms of any risk of the extension that we're seeking being derailed. The fact that had the application been made soon we would have reframed submissions and we would have dealt with the issues rather differently and asked for more time.

C And then finally merits. We're back to merits on – under discretion. Because we say that even if, My Lady, you were of the view that there are good points, Your Ladyship has to consider which of the points are good. And if you were to allow the application, consideration must be given as to which points can form the subject of submissions. As a matter of your discretion. And refer back to our note in relation to that.

D And I think you have our position. If you're with us, and you are of the view that there was no – it was all given proper consideration to all the points properly raised and all the rest of it, then the points which are sought to be raised by Ms Branch we say go nowhere. And back to the test of is there a real prospect of her being able to obtain the [inaudible] is different.

E My Lady then I say, if you are minded to allow the 40.9 application regardless of all of that, then it should be siphoned off on a case management basis. And the reason for that is well given the extensive nature of the submissions and the skeleton, we're going to need much more than this afternoon. Can't affect expiry, I've made the points on prejudice, and would ask the matter to be reserve to Your Ladyship because otherwise there's going to be duplication and wasting of court time. And it ought to be possible, and I would have thought My Lady, to include in the order so as to not prejudice Ms Branch if you're with her on the 40.9 application, provision for her to make that application. It is just simply an order in there and identifying the points which she – considering the [inaudible] for good

A ones. And appropriate, for submission to be made-

MRS JUSTICE HILL: Sorry, could include provision for her to make the application.

MS STACEY: To make the application. But if you're-

MRS JUSTICE HILL: Are you saying she has not actually made it?

B MS STACEY: For the hearing, sorry. For the hearing of the application. You could include, it's entirely a matter for Your Ladyship, but if an application is to be made, provision could be made for a hearing to be listed.

MRS JUSTICE HILL: I see.

MS STACEY: For that application.

C MRS JUSTICE HILL: You are not taking a Rule 23 point against her?

MS STACEY: No, it's case management directions for the hearing of that application which would include identification of the points which you will exercise your discretion and consider to be good ones and proper for her to make. And we would say they would exclude necessarily any points in relation to the environmental word in the description of persons unknown because that is something she has no standing in relation to. In the same way as she had no standing to make submissions in relation to the third party disclosure application. Because she is not affected by that.

D MRS JUSTICE HILL: And you draw distinction between petrol stations, Tower and Haven.

E MS STACEY: And we draw a distinction between petrol stations, Tower-

MRS JUSTICE HILL: So you say conceptually, or evidentially justified for me to limit her 40.9 involvement to the petrol stations?

MS STACEY: Limit them to properties and limit them to issues. Because the issues – you're being asked at the moment, if I understand it, to allow submissions in relation all the points in Mr Simblet's skeleton. But there needs to be identification of what the proper scope of the submissions could be.

F MRS JUSTICE HILL: But you have made the point have you not that she has an additional hurdle to get over in relation to petrol – forgive me, Haven and Tower?

G MS STACEY: Yes.

MRS JUSTICE HILL: Because you do not even concede direct effect on that?

MS STACEY: No.

MRS JUSTICE HILL: Quite aside from the other building blocks of your argument?

MS STACEY: Exactly.

H

A MRS JUSTICE HILL: Thank you very much.

MS STACEY: So having said all of that, My Lady, I was going to come back to, and complete my taking you through the review. We're nearly there. At last, when we rose yesterday I was asking you to read the past evidence and I was then going to take you to the current evidence, the skeleton, and wrap it up which shouldn't take very long.

B MRS JUSTICE HILL: If it helps you, because we have done this a little bit back to front. No criticism of anybody. But yesterday, day before? Day before, whichever day that was, Monday. Let me just go in the fresh evidence here. So I have already read [Lashbrooke One?], [Garwood Three?], [Austin Three?], Pritchard-Gamble One, [Oldfield One?],

C Oldfield Two and Oldfield Three.

MS STACEY: That's very helpful.

MRS JUSTICE HILL: I have not gone through all the appendices, but I have read the statements.

MS STACEY: You've read the statements.

MRS JUSTICE HILL: Yes.

D MS STACEY: And you will note – have noted therefore that there's reference to the background, the risk as asserted in the witness statements in relation to each of those properties, and the harm that would be caused if the protection afforded by the injunctions were not continued.

MRS JUSTICE HILL: And the very helpful, if I may, the [inaudible] anyway.

E MS STACEY: I'm grateful because I was about to take you to the skeleton. So paragraphs – if I can just do it quickly in this way and ask you to pay particular reference to skeleton at 11-19.

MRS JUSTICE HILL: Bear with me a second.

F MR SIMBLET: My Lady, while you are turning that up, in a sense you have commented on this already. We have dealt with matters to some extent procedurally in reverse. Technically of course, this is my application to be heard on behalf of Ms Branch. And you've heard the arguments as to why I shouldn't be. When would – and yesterday you said the case was listed for a day and half and you've got this afternoon to deliver your judgment. Is there a

G point at which you were proposing to invite me to make any oral submissions, and is that time after lunch?

MRS JUSTICE HILL: Yes, it is. It is. I should have made clear.

MR SIMBLET: I shall sit down.

H MRS JUSTICE HILL: That I have had to make other arrangements. So you have this afternoon. I

A should have made that clear, my apologies. Yes, so I have got your evidence and I have got your skeleton here.

MS STACEY: You've got all the evidence; you've got the chronology. The skeleton.

MRS JUSTICE HILL: And the particular paragraphs you have flagged in your skeleton?

B MS STACEY: Yes. 11-13. Not all the references but the key references to the original threat. You've read the witness statements anyway as you have indicated. Fourteen, 15 refers to continued threat, and you'll see there are specific references under the heading of petrol station sites, corporate buildings and oil refinery sites. So we've pulled out the key, most recent incidents in relation to those. Paragraph 16, My Lady deals with broader incidents
C which equally dealt with in Mr Pritchard-Gambles' overarching witness statement, if I can put it that way. And if I can bring matters right up to date with the latest word on that, there's a clip that I wish to hand up to Your Ladyship, it's a news item of yesterday.

MRS JUSTICE HILL: Thank you.

D MS STACEY: Which is a statement by Extinction Rebellion. It's to step up the campaign. I think this is dated one day ago, that was yesterday. We printed it off this morning. And I'm referring Your Ladyship to it specifically for the purposes of on page three you'll see a statement on behalf of Extinction Rebellion, top of the page. Refers to a demand for the halting of all new coal, gas and oil exploration.

E And then you'll see the third paragraph down on the third page, 'Next we will reach out to supporter organisations to start creating a plan for setting up our campaign to force an ecosystem of tactics that includes everyone from first-time protestors to those willing to go to prison'. So it's an escalation, it follows on from the ultimatum letter. It just represents a – we understand, the latest-

F MRS JUSTICE HILL: So paragraph 16 you would add a sub-paragraph. In light of the – what is the date on this? It is literally today?

G MS STACEY: Yes. And that then makes good the point in paragraph 17, going back to the skeleton which is saying the protest campaign is far from over on the evidence. Protest groups continue to attempt to put pressure on the government to halt new investments in fossil fuels and Shell and its asses will, as before, continue to be a target.

H And then at 18, we made some general points which are relevant to risk, My Lady. And they are organisation points which you'll see listed at paragraph 18. And I'd remind Your Ladyship that it's not just JSO, the – on the evidence it's – there's a significant degree

A of overlap between the groups. You have – heard reference to Animal Rebellion and the austerity protest groups JSO, Extinction Rebellion, Insulate Britain and other groups.

B And then finally My Lady at paragraph 19 on evidence you see the reference to harm? My Lady will recall the two-stage test in the *Bastin*[?] judgment of Smith J, where he essentially says, and I can take Your Ladyship to it if you wish, but essentially it's, 'Is there a real and imminent risk of the activities occurring?' And then secondly, 'Would the harm be so grave or serious as to cause irreparable loss?' That's essentially it. And the greater the harm, whilst there's no fixed or absolute standard for measuring the risk, the greater and the more serious the harm, the more likely it is the Court will be satisfied that the protection should remain in place.

C MRS JUSTICE HILL: And you rely on the potential severity of the risk?

MS STACEY: And we rely on-

MRS JUSTICE HILL: So, forgive me, severity of the harm.

D MS STACEY: In relation to harm we rely on what's set out in 19, in summary. Haven and petrol stations, storage of flammable petroleum products, and that gives rise to an extremely serious potential risk of harm. Asking rhetorically if this injunction wasn't in place and that were to happen, could that harm be capable of being compensated for in damages, or be undone? The answer to that is clearly no. And we have-

E MRS JUSTICE HILL: Because it involves a risk to life and limb?

MS STACEY: Indeed. Health and safety risks. And we have set out in paragraph 19a a legitimate concern that if it weren't in place there is a real risk of potentially very serious incident which we cause real harm to the protestors, to the claimant's staff and/or to the general public. Which is incapable, simply, of retrospective remediation.

F And so far as Tower is concerned, the harm is different, but you've seen the evidence of what has happened in the past, you've got the evidence for example of the protestors climbing up on the canopy of the tower. In one of the earlier witness's, I think it was Mr Brown's statement, Brown number one. And indeed in – that's summarised also in Ms Lashbrooke's statement.

G And there's also a risk of trespassers who were, if they were to enter into the building as we are prohibiting them to do, would cause danger to the health and safety of staff and contractors, and the general public to whom my clients have a duty to protect. So harm is an important factor, but the two tests are both risk of the activities occurring and the harm

A that would eventuate. So for all of those reasons, My Lady, we say that it's quite clear that the protection should be in place and that his Court, as other Judges have done in relation to similar injunction proceedings since January, should continue the protections which were obtained by my clients.

B So far as the duration is concerned. Actually, before duration, 43 of the skeleton My Lady deals with persons unknown. And as you'll see at paragraph 45, 46 and 47 in relation to stations, we are asking for a variation of the order to remove the word environmental from environmental protest campaigns. Now My Lady, there's an argument to be made that the label or the name of the particular protest group is legally irrelevant. Because
C *Canada Goose* requires that the persons unknown be described by reference to the acts which are alleged to be unlawful.

MRS JUSTICE HILL: Not the rationale.

MS STACEY: It's entirely irrelevant who they are, what their motivations are, how -what they call
D themselves. So for that reason I say that it should be removed, as a matter of law. But in any event we've got the evidence, My Lady, that it's not simply environmental protestors, and therefore that no longer reflects the threat which we say is imposed.

MRS JUSTICE HILL: Because you say the *Bastin* test is now met by those who are so described?

MS STACEY: Exactly. And so far as duration is concerned, we deal with that My Lady at
E paragraph 50 of the skeleton argument. And at the outset you'll see what we say there. Essentially our position is we're seeking an order until trial or further order, but with the 12-month backstop. That doesn't prevent, My Lady, if you're with Mr Simblet and his client in relation to 40.9. It doesn't prejudice her ability to apply to the Court in that period. But the reason for the 12 months, and it's not the case that I'm seeking anything beyond the
F 12 months as suggested by this might. If I've said anything to the contrary, that's not my intention.

The 12 months is simply there to allow for the procedural steps that will need to be taken by my client and laypeople post-Barking and Dagenham, once they understand what the legal
G landscape is. And it is, I suggest, an entirely appropriate backstop period for my client. But it's not to be taken from that that they are simply seeking a continuation for 12 months so they can sit on their hands and do nothing between now and then.

And so far as terms are concerned, My Lady our headline position is that everything was
H considered by the Judges before and it's all appropriate. But I, if I may, reserve the right to

A come back in relation to any terms depending on how things develop this afternoon.

MRS JUSTICE HILL: Certainly. Is there anything else you wish to say, Ms Stacey?

MS STACEY: Yes. I should also make a point that the duration was not simply to do with
Barking and Dagenham, it was also consistent and enforced-

B MRS JUSTICE HILL: HS2.

MS STACEY: Well HS2 but also the nature of the threat [inaudible]. So originally, in the
evidence you will have seen references to the next two to – three to four years being critical.
So there are long sustained periods of time over which these protestors have expressed the
intention to continue their campaigns. So it's not a temporary thing, and that is also a factor
C which needs to be weighed in the balance when considering duration.

MRS JUSTICE HILL: Understood. Okay.

MS STACEY: [Inaudible] finally.

MRS JUSTICE HILL: Thank you.

D MS STACEY: I should tell Your Ladyship what our position is on publication. Because I've said
to Your Ladyship that everything was considered properly, but yesterday you'll recall that
Mr Simblet made the point which I've described as a good one. Well I should caveat is
potentially a good one in relation to the writing on the forecourt.

MRS JUSTICE HILL: Yes. Did I say that?

E MS STACEY: I think that was my description.

MRS JUSTICE HILL: Yes. It may well be, but I am not sure I have given any view, that is all.

MS STACEY: On the face of it it seems – well certainly one that I hadn't considered, but I've
considered it overnight and I just want to just finalise what our position is. So it's in fact
not – it doesn't change anything is essentially what we say. So Johnson J in paragraphs
F 68-71?

MRS JUSTICE HILL: Yes.

MS STACEY: Sorry, I am fingers and thumbs. And it is the wrong authority, I'm sorry. Yes,
refers to Cream[?]. And refers to the fact that Parliament, you'll see the sentence starting,
G 'Parliament enacted Section 12.3 to address that concern, going back was the concern being
that Article 8 being incorporated into domestic law might result in the Courts readily
granting interim applications to restrain publication by newspapers of material that
interferes with privacy rights'. So that's the concern. 12.3 was enacted to address by
setting a high threshold for the grant of an interim injunction for such cases. And it codified
H

A the prior restraint principle.

And Johnson J said, 'That policy motivation has no application here'. We would adopt that.

B So the fact that people are writing on forecourts or spraying words on walls doesn't engage the policy consideration or motivation that gave rise to 12.3. Equally, he goes on to say My Lady, that, 'The word publication doesn't have an unduly narrow meaning so as to apply only to commercial publications'. Fine. But then to track down that sentence, 'It should be applied accordingly to cover any form of communication'. And then at 70, the meaning set out by Lord Sumption in *Latchow*[?] is sufficient to achieve the policy intention. He then says, 'There is no good reason therefore for giving the word publication an artificially broad meaning so as to cover for example demonstrative acts of trespass in the course of a protest. Such acts are intended to publicise the protestors' views, but they do not amount to publication'.

C And equally, where a protestor, in the course of a protest and the context of a protest, is writing on a forecourt or on a wall, they are not publicising, they are expressing – they are intended to publicise the protestors' views, but they do not amount to publication.

D And at 71, My Lady, the point is made that, 'The word publication has a narrower reach than the word freedom of expression, or the term freedom of expression. And it's not intended to apply to all forms of expression'. That's paragraph 71.

E So for those reasons, My Lady, our position is that the writing to which Mr Simblet made reference, doesn't fall within publication under Section 12.3. So our original position still stands. But in any event, we come back – it's a non-point anyway because Johnson J proceeded on the basis that even if it did-

F MRS JUSTICE HILL: The likely test is met.

MS STACEY: Exactly.

MRS JUSTICE HILL: Anything else you would like to say, Ms Stacey? Thank you.

G MR SIMBLET: Well My Lady, before Ms Stacey sits down on that point, it was the – my submission in the written document and supported by the orders made in the *Ineos*[?] case that that might very well be Johnson J's opinion, but in fact he is bound by the decision in *Ineos*. The submissions we've heard at the moment have not addressed that point.

H MS STACEY: My Lady, I think I addressed this yesterday when I said that Johnson J was right to say that there had been no argument and they proceeded on the assumption that Section 12.3 applied. That there had been no specific argument in relation to the point and there

A Johnson J's judgment is the first, as I understand it, considered exposition of the circumstances in which the test applies and the question of whether it applies in the context of such protests.

MRS JUSTICE HILL: All right. Mr Simblet, we will just take a very short break and then we will discuss where we go from here. Five minutes.

B **Court adjourns.**

Court resumes.

MRS JUSTICE HILL: Mr Simblet?

C MR SIMBLET: Well let me just try to – you said you wanted to take stock. Can I begin by making some points about where we have got to on the *locus* of Ms Branch? And of course one point that has now been teased out essentially under scrutiny from Your Ladyship, is that since these injunctions are coming to an end anyway, the real value of Ms Branch's contribution is not in relation to past acts, but in relation to the continuation of the injunctions.

D And to that extent, anybody could be sitting here at this *ex parte* hearing that these claimants have arranged on their timetable and for their convenience and seeking to object to the continuation of the order. So Ms Branch can hardly be in a worst position by-

E MRS JUSTICE HILL: On what basis though, Mr Simblet? That is your general discretion point before 40.9 is it?

F MR SIMBLET: Well let's leave aside for – yes, leave aside 40.9. Where we have got to is the claimants, and this is the fallacy with which Ms Stacey persisted under exchanges with the Court this morning. Where we have got to is if in fact, as My Lady puts it, the claimants have injunctions which are going to expire next week, what they are really seeking to do is have new injunctions granted. Or, and I might have said the same injunctions re-granted, though of course they do seek some differences. So what they are seeking is new injunctions to be granted. So what this is on that analysis, but not Ms Stacey's analysis where she uses review and so on, is a hearing at which the Court is being asked to grant relief against persons unknown. And which therefore anybody is entitled to make submissions and oppose.

G MRS JUSTICE HILL: But is that right, Mr Simblet? I mean I have given no firm view about how the hearing should properly be characterised, but they are injunctions that are sought against a defined group of persons unknown, not persons unknown at large. So is it right that

A simply anybody could make representations?

MR SIMBLET: Well yes. Because not only is that the point that's made in *Canada Goose* that anybody – I mean the dicta are pretty broad in *Canada Goose*. And it is essentially for the person themselves, to an extent, to define whether they consider that they might be affected by these orders. I mean this is the – this is one of the pernicious results of the claimants suing everybody, or suing nobody but seeking to bind potentially everybody, and say that you become in breach of the injunction by doing the act.

B So the trouble with this persons unknown procedure, in a protest context, is that a person may want to put forward the position that particular things should not be subject to an injunction from the Court. Because they are, for instance, lawful protest or something like that. On Ms – on the way these proceedings have been brought, either they can say so before the orders are made, but in most cases they won't know because they've not been named and they've, in many cases, not even been served. Or notified. And sometimes you get orders withholding – withholding notification of the fact of the hearing until after the injunction has been granted. It's not what's happened here, but it can happen.

C So the claimants say they should be able to get their injunctions without any opposition from anybody, or without naming a defendant. But the effect of the orders that are obtained, and it's very clear, is – and this is where the *Gammell*[?] decision which is referred to in *Barking* and so on becomes of importance. A person can end up in breach of the injunction, and at that time, by breaching the injunction, becomes a defendant.

D So essentially, the – everybody is given the choice of either do completely what the claimants would say their order means, however broadly it's drawn or however they've gone about it. And you will see that in this case they sought orders that Judges refused to make, and we've had the example of Bennathan J. Or they can breach the order and find themselves facing the very serious consequences of contempt proceedings. Or they can turn up in front of Johnson J and be told, 'I don't want to hear you', and, 'You're not having an adjournment'.

E So essentially, the – everybody is given the choice of either do completely what the claimants would say their order means, however broadly it's drawn or however they've gone about it. And you will see that in this case they sought orders that Judges refused to make, and we've had the example of Bennathan J. Or they can breach the order and find themselves facing the very serious consequences of contempt proceedings. Or they can turn up in front of Johnson J and be told, 'I don't want to hear you', and, 'You're not having an adjournment'.

F Or they can do what Ms Branch has done, which is to show up to this hearing before My Lady and say these injunctions should not be re-granted, and there were – and the way that the Court has so far looked at them has some difficulties. And there are difficulties with the claimant's case going forward. And one irony of this case is that although it is on the petrol stations injunctions, is that although it is alleged that there is a conspiracy, and

A that is the only basis upon which the injunctions are sought, a conspiracy between a whole range of unidentified people who, on the evidence and on the submissions Ms Stacey made yesterday, would appear not to be in agreement about major things.

B It's hard to see how environmental protestors protesting about the use of petroleum products and the carbon emissions and so on, have anything in common with people turning up at a petrol station complaining about the cost of living whose contention is that fuel should be cheaper. It's hard to see, as a matter of common sense, how that can be any sort of common cause there. But that is the basis upon which the claimants now put their case and ask for you to extend the injunction that have already been granted. If – but at the same time, C where there is an agreement is between the various fuel companies involved, who are coordinating, it would appear, although you have very imperfect information about that, a series of applications to Courts for injunctions to stop people doing things that they would rather didn't happen.

D So if there is a conspiracy, it appears to be a conspiracy to seek remedies from the Court, rather than a conspiracy between completely unidentified people who appear to have very different purposes. Yet that is the central plan upon which the petrol stations injunction is to be pursued.

E So we say – and the second point is, or not the second, the additional point on being heard, is that it is Ms Stacey's submission, and she was pressed about this but she maintains it, that Jessica Branch is not somebody who can become a defendant, and it would not be proper for her to be joined as a defendant. So her contention therefore is that it's only people who are tort [inaudible] who may find themselves subject to enforcement action, who can make representations against it, and effectively nobody else can because they don't have any F *locus*. So that is how the Court-

MRS JUSTICE HILL: I am not sure that is quite how she put it. I understood her to be saying-

MR SIMBLET: But it's the consequence of what she says.

G MRS JUSTICE HILL: I am not sure that is right though is it? Because she accepts that your client in principle could be within 40.9 but says there are reasons why she should not be so recognised.

H MR SIMBLET: Well – but she – no, she says that. But she also says that there are difficulties with 40.9 in terms of going forward. I'm looking at the injunctions you're being asked to make going forward. Ms Branch isn't asking to set aside orders that haven't yet been made. How

A could she? She is seeking to say you shouldn't make these – and that's what the – that's where the logic of the claimants-

MRS JUSTICE HILL: So you say the combination of Ms Stacey's position that Ms Branch cannot be a defendant, and one of the reasons she is not properly within 40.9 at all is because that would limit her to submissions about the past order?

B MR SIMBLET: Yes.

MRS JUSTICE HILL: Which means that she has no – there is a gap?

MR SIMBLET: Yes. That's her submission. That's the consequence of where we are, isn't it?

MRS JUSTICE HILL: I think – I mean-

C MR SIMBLET: I can't see how that isn't, on what we've heard.

MRS JUSTICE HILL: I think that was one permutation of the submissions. I think Ms Stacey, I understood you to also be saying that one way of characterising the 40.9 involvement is that it is an ongoing order that is reviewed, and therefore she would have *locus* in a future facing way.

D MR SIMBLET: Yes.

MS STACEY: Exactly.

MR SIMBLET: Yes, but that isn't right.

E MS STACEY: I said it was a time limit point. Yes. One way of characterising is was – not a new order, effectively, but it's saying it's a continuation.

MRS JUSTICE HILL: Yes.

MS STACEY: And that's because that was consistent with the way we put our case on review.

F MR SIMBLET: But the trouble with that is that that is wrong. Because it is a new order. And the fact that it is new, required to be a new order, is the subject of binding authority from the Court of Appeal in *Ineos*. And if I can bore you with *Ineos*, which is the Court of Appeal's decision which is in our bundle of authorities. And again pausing there, if it comes to the issue of do we have a good point or things to raise.

G A number of times we've had to look in our authorities to make out parts of Ms Stacey's case. Or to consider parts of Ms Stacey's case. We had to look at the conspiracy authorities there yesterday, we've now got to look at *Boyd v Ineos*, so if we weren't here with our authorities, what point would be made?

H But turning to *Boyd -v- Ineos*, Lord – sorry, I've written on my notes what the actual reference is, but there are two references from Longmore LJ, as to what was wrong – one of

A the things that was wrong with the injunctions made. Paragraph 4, page 247 of the authorities bundle, 'The injunctions granted by the Judge against the first and second defendants have acceptable geographical limited but there is no temporal limit. That is unsatisfactory'.

B MRS JUSTICE HILL: Sorry, paragraph?

C MR SIMBLET: 43. Page 247. And then over the page, paragraph 50 headed disposal, 'I would therefore discharge the injunctions made against the third and fifth defendants and dismiss the claims against those defendants. I would maintain the injunctions against the first and second defendants, pending remission to the Judge to reconsider or one, whether interim relief should be granted in the light of Section 12.3 (h) (r) (a)', and obviously I've got submissions about the implications of that. And, 'Two, if the injunctions are to be continued against the first and second defendants, what temporal limit is appropriate'.

D So the Court of Appeal, leave aside all these anecdotes that you've been told about people wandering along in front of Judge at the Queen's Bench Division whose judgment nobody can see and we're dependent on the applicant's own note of the proceedings to work out what's going on. The Court of Appeal have determined in those – in that case and others, that there should be a temporal limit to the injunction.

E So therefore what is being sought from My Lady is new injunctions. Because the old ones cannot go on indefinitely because if one of these Judges, whether it's Bennathan J or Johnson J, had made an order without a temporal limit, that would be unacceptable. And wrong. So her submission, and where she – this is why we got into this debate although the Court and she got into this debate about quite what the role – what your role is and whether you have to sit there, as it were, bound by what Bennathan J or Johnson J thought about a point, albeit the very limited assistance they've had from anybody not wanting an injunction to be granted.

F Whether you were bound by that, it's quite plain, and I think you had got from my observation of those exchanges, is you had got to the position that plainly you're not confined in a case where there have been no named defendants, and the case is not properly *inter partes* in any sense, you are not bound by the fact that other Judges have taken a particular approach to the evidence when you come to look at whether injunctions in similar terms should be remade. And that being the position-

G H MRS JUSTICE HILL: Well I think that was close to Ms Stacey's concession in light of *Gee*-

A MR SIMBLET: Yes, she got – essentially she eventually accepted that that must be the-
MRS JUSTICE HILL: Yes-
MR SIMBLET: But the logic of-
MRS JUSTICE HILL: Caveated slightly, but still the *Gee* rehearing point was made.

B MR SIMBLET: Yes, absolutely. And the logic of that, and pausing there, that’s again a good point
that we have raised. You were being told yesterday that the law was totally different on that
point, and it was only after attention had been drawn to what Kavanaugh J had done in *Lee*
and the number of defendants and so on that that – those further researches are undertaken.
But leaving all of that aside, the fact is that if you are not required slavishly to follow what
C Johnson J has decided, particularly knowing that people wanted to oppose it and weren’t
allowed to. Or what Bennathan J has decided, then it becomes therefore at this hearing a
situation in which people who wish you not to do what Ms Stacey applies for, are entitled to
raise objections and be heard.

D Now one means by which the Court has suggested such intervention might in this case-
MRS JUSTICE HILL: What is the rationale for a category short of 40.9, Mr Simblet? I am sorry if
I am not following it.
MR SIMBLET: No, on the face of it there may be people who say they don’t want to be joined.
I’ve explained why.

E MRS JUSTICE HILL: Yes.
MR SIMBLET: Don’t agree with the order, object to its chilling effect. And may – I mean we say
you don’t have to use 40.9, but-
MRS JUSTICE HILL: But why?
MR SIMBLET: Well because anybody is entitled to say, ‘I wish to object to this order’.

F MRS JUSTICE HILL: But is that right?
MR SIMBLET: Well it may be that it’s not because the solution is, as *Canada Goose* talks about
and 40.9 talks about. 40.9 – but then of course – but then the difficulty with simply
jumping into the 40.9 hole is that Ms Stacey says, and still maintains the position that has
G difficulties about applications going forward as opposed to things that have happened in the
past. So if she’s right about that, if she’s right about that and she’s right that Ms Branch
cannot properly be joined as a defendant-
MRS JUSTICE HILL: It is the-
MR SIMBLET: Then either Ms – nobody can ever hear from people like Ms Branch, or there is

H

A some other means by which they can address the Court. And that's why I'm putting my submissions in the way that I did. She either has to, as it were, shut up and go home because you're not a defendant. Or the Court has to allow her to address it and if 40.9 is – has the construction that Ms Stacey raised, then that causes difficulty. That's how I put it.

B Now you, My Lady, have suggested a means by which her opposition can be formalised, by using 40.9. But if you don't do that and you apply the logic of the position that was being discussed yesterday, which is that the Court may put out of its mind anything Ms Branch has had to say, then what you would have effectively done, is remade orders, knowing that there were opposed, and not allowed anybody to oppose them. And then some other Judge in six months to a year's time, would be given some note of whatever went on here. I mean if it were – we're waiting a year for a judgment from Sweeting J. But leaving that aside, if there were no formal judgment, then some note would be produced and we'd have some anecdotal evidence about what went on in some other proceedings before somebody else about which we know little. That cannot be the way.

D MRS JUSTICE HILL: Yes, and-

MR SIMBLET: -In which litigation is conducted in these Courts.

E MRS JUSTICE HILL: No. And it may be that -I am conscious of the time so I will take the lunchbreak shortly, Mr Simblet, but it may be that we are perhaps in this unusual procedural space because of the novelty of the persons unknown jurisdiction.

MR SIMBLET: Well yes.

MRS JUSTICE HILL: And the existence of 40.9.

MR SIMBLET: Yes, I keep having to say-

F MRS JUSTICE HILL: But being the best we have got, but not being a perfect solution. Because 40.9 has plainly been there long before persons unknown.

G MR SIMBLET: Absolutely – well not if – not according to the Master of the Rolls, the current Master of the Rolls in *Barking* where apparently – because there have in the past been persons unknown injunctions pursued in relation to coming on land. And that's why I accept and I-

MRS JUSTICE HILL: Yes, but-

H MR SIMBLET: It's the use of persons unknown in cases that go outside simply turning a trespassers will be prosecuted notice into one with legal effect.

MRS JUSTICE HILL: Yes. I agree.

A MR SIMBLET: And that – but that, we say, is their choice. They’ve chosen to bring their
proceedings in this way. Normally the Courts expect people to say who is it you wish to
proceed against and why? You say what you – people don’t just bring proceedings
B randomly for orders, they name the defendants and they allow the defendants to have their
position put before the Court. They have taken, deliberately and intentionally, a procedural
shortcut which operates for the convenience of the claimant and cannot be allowed to act –
to cause injustice.

And we say that if you follow through what Ms Stacey is saying, it causes obvious injustice
and so cannot be right. And if in fact you – there – if in fact she were to stick as doggedly
C to those submissions as she appeared initially to, that would – may of itself be a reason to
deprive the claimants of the injunctions because of course injunctions themselves are
discretionary relief.

How can a party come to court and ask a Judge to exercise her discretion in circumstances
D where the Judge knows the proceedings are fundamentally unfair and expose people to the
risk of fines and imprisonment? It’s – it cannot be right and we don’t – essentially, all of
that is from first principles of what is a Judge, what is the rule of law, what are proceedings,
who are claimants, who are defendants?

Defendants are defined in the CPR as the person against whom the claim is brought. What
E happens here is the claimant call the defendants – well they are basically theoretical
defendants, they’re conjured up defendants, who don’t actually exist as people, but they
exist as a threat. As a means by which the threat is to be visited upon the claimant.

And that’s why I say there are conceptual problems with the under – particularly with the
F petrol stations case. There are very severe conceptual and practical problems with the
underlying claim.

MRS JUSTICE HILL: No, and I understand-

MR SIMBLET: And when I come after lunch, I will try and take you through some of them.

MRS JUSTICE HILL: Just in terms of practicality, we have this afternoon but I will need to sit no
G longer than 4.30. So within that time, I think there are some – I am happy to hear from you,
I have made arrangements to hear from you and in fairness, still on a [inaudible] basis, if
you like, without commitments as to status here.

MR SIMBLET: Thank you. Well-

H MRS JUSTICE HILL: Forgive me, I think Ms Stacey would wish to have some time to come back

A on some of the points about the order that you might make, some of the points about terms.
MR SIMBLET: Yes.

B MRS JUSTICE HILL: I know we have taken things slightly back to front and there might be arguments about who has the right to reply on what etc. But in the spirit of case management can you discuss amongst yourselves how to manage this afternoon?

B MR SIMBLET: Well if it helps narrow the issues, now that we know that the point in Ms Stacey's skeleton argument, and the skeleton argument that was served in respect of these proceedings, late in the day. So if we're talking about who is complaining about late points and things, then in the light of the fact that 25b has been struck through-

C MRS JUSTICE HILL: Is that the nuisance point? Remind me?

MR SIMBLET: Yes. The public nuisance point. I hope this is 25b, but in the light of that letter b going, I do not need to make my public highway submissions.

MRS JUSTICE HILL: Okay.

D MR SIMBLET: Certainly with the same intensity.

D MRS JUSTICE HILL: So the main areas of your submissions this afternoon will be?

MR SIMBLET: In – what I will be saying. Something about the underlying basis of the petrol stations claim.

MRS JUSTICE HILL: That is about the conspiracy point?

E MR SIMBLET: Yes. Conspiracy and the Section 12. And the...

MRS JUSTICE HILL: Some detail on the terms.

MR SIMBLET: Some detail on the terms and the length.

MRS JUSTICE HILL: So they are the broad headings for you this afternoon?

MR SIMBLET: And – yes. I think that's likely to cover most of it, yes.

F MRS JUSTICE HILL: So time – some timetabling.

MR SIMBLET: And I won't be long.

MRS JUSTICE HILL: On the basis that I have now freed up this afternoon and made other arrangements, Ms Stacey can then respond as she sees fit on the terms and the-

G MR SIMBLET: Yes.

MRS JUSTICE HILL: I think that should be enough time.

MS STACEY: We will discuss – you would like a timetable from us, yes.

MRS JUSTICE HILL: Well I think we have perhaps just done it ourselves have we not?

H MR SIMBLET: Yes. What time are we going to restart?

A MRS JUSTICE HILL: We are going to start at 10 past two.

MR SIMBLET: Thank you. So at 10 past – I would expect to have finished around about 10 past three.

MRS JUSTICE HILL: So Ms Stacey has-

B MR SIMBLET: I hope that, and that should give us a – and the points on the terms are pretty back and forth ones that either I'm right or I'm wrong and either she's right or she's wrong. It's not – there's no going to be lengthy further ability to support or attack the other person's position.

C MRS JUSTICE HILL: In terms of practicality going forward, with no further commitment being given on my part at all, I would be giving a judgment of some sort before the end of this week, given the expiry of the injunctions on Tuesday. I will give some kind of judgment this week.

MR SIMBLET: Thank you.

D MRS JUSTICE HILL: Because I am aware that I think two of them expire on Tuesday.

MS STACEY: The second, yes, which is Tuesday.

MRS JUSTICE HILL: Which is Tuesday and Monday is a non-working day. So I will give some kind of judgment this week. I have not yet been able to work out the logistics of how that will be. Whether it will be a written judgment with a very tight turnaround for amendments.

E So in the usual way, so a written judgment, then that is handed down in your absence. Or a short Teams hearing perhaps at which I gave a judgment to you on Teams where I read it out. Discuss amongst yourselves please over lunch what your logistics are over the next two days, what might be more amenable to you and I will take that into account. I cannot say I will – be guided by it.

F MS STACEY: I take it from that that would be a judgment, and there wouldn't be a more detailed judgment later? That would be the judgment?

MRS JUSTICE HILL: It depends. It depends. There will be a decision this week. But I anticipate that it will-

G MS STACEY: There are some important points that need to be thrashed out, so I just-

MRS JUSTICE HILL: Yes, I mean there is going to have to be a decision by me this week at least on the ones that expire on Tuesday.

MS STACEY: Indeed.

MRS JUSTICE HILL: And it is a question of how that is done. So discuss amongst yourselves

H

A whether for you example you would want a further short Teams hearing at which I give you a decision. Or whether you would prefer to do it in writing, but you would have to be very aware of the need for a tight turnaround on giving any amendments to a draft judgment.

MS STACEY: Yes.

B MRS JUSTICE HILL: Because normally you would have two days would you not between a draft, let us just say, and a hand down hearing.

MS STACEY: Indeed.

MRS JUSTICE HILL: And there is not that capacity.

MS STACEY: No.

C MRS JUSTICE HILL: So for example, if a written judgment were to be circulated, with no commitment at all, but something like nine o'clock on Friday morning, amendments would have to be back by 12 or two, something like that.

MS STACEY: Yes, and the amendments would be limited to typographical errors.

D MRS JUSTICE HILL: Of course. That is the – those are the only ways I can see. I do not particularly want to require you all to attend in person.

MS STACEY: No. But also we're mindful of Your Ladyship's time and if you need more time to give more detailed judgment, then-

E MRS JUSTICE HILL: And I think that is what Johnson J did, did he not? He gave a decision and then gave-

MS STACEY: And then took the time to set it all out in detail. And I think given the climate we're in and the fact that these cases are rapidly evolving, there's a need for clarification. It seems to me without instructions it might be practical for a decision to be given so that an order can be prepared and then more detailed judgment to follow. That would be our [inaudible].

F MRS JUSTICE HILL: Well discuss amongst yourselves what your movements are and what might work best.

G MR SIMBLET: My Lady, just before you go. Ms Hardy reminds me that – and my shopping list of things I was going to address you on, I have not included 40.9. I've obviously put the note in and you've seen my submissions, but that's obviously – second – you've heard my primary submission which is that it's just a tool by which people can address you.

H MRS JUSTICE HILL: Well perhaps let us do it in this order. I mean bearing in mind I have read your client's statement, I have read Ms Freeall's, I have read the submissions. I have got

A the measure of 40.9. I have got very clearly the measure of what your learned friend says about it.

MR SIMBLET: Fine.

MRS JUSTICE HILL: If there is anything you can add on that, let us take that first.

B MR SIMBLET: Thank you.

MRS JUSTICE HILL: All right. 10 past two.

Court adjourns.

Court resumes.

MRS JUSTICE HILL: Mr Simblet?

C MR SIMBLET: My Lady, beginning with 40.9 because there a couple of additional points to me. I obviously rely on my note, and you obviously have my point that we are not necessarily just in 40.9 territory because this an application for [inaudible] for new injunctions. So you have got those points. But assuming we do have to say something about 40.9, a deal of complaint is made by the claimants about previous involvement of Ms Branch with these proceedings, and the lateness with which the notification of our intention to be at Court to resist the submissions as made.

D Two points about that. The first is of course – the first is, as My Lady has observed, there is – if in fact the claimants ask for an order which can be set aside on 24 hours' notice, a person such as Ms Branch who is not seeking to set it aside, can hardly be in a worse procedural position than somebody who is seeking to set it aside. As a matter of common sense and common sensical case management.

E Secondly, store was placed on the fact that various pieces of information had been sent to Hodge Jones and Allen, and specifically Ms Hardy. Well Ms Hardy is not, as it were, on permanent retained to Jess Branch. Mr Hardy is a solicitor who in certain cases is instructed, if the client so instructs them, and makes arrangements for remuneration and those sorts of things, able to take on a case and represent somebody.

F Ms – neither Ms Hardy – well let's put it this way, Ms Hardy is not some sort of post box for the claimants to use when they send something. Particularly when what they sent suggested that it wasn't that important. Said it's, as it were, out of abundance of caution we're sending you this material. And if what – if at the end of that what the claimants then say is that somebody who was sent some stuff, or whose previous solicitor has been sent some stuff.

H

A And bear in mind Ms Hardy is not on the record in these proceedings, this is not like a
situation where Cameron McKenna were on the record, and then the notice was sent saying
that now it is Eversheds on the record. Ms Hardy had previously accepted instructions to do
B various things at an earlier stage of some of the injunction proceedings. She is not formally
on the record, and merely sending her a document does not require either Ms Hardy to do
anything or provide some sort of constructive notice to Ms Branch.

I accept of course that now, looking back at what has subsequently happened, and if you
piece it all together and you put together all the pieces of documentation, served as they
were in a very different form from that which is before My Ladyship, that on reflection,
C Ms Branch decided that she wanted to appear at this hearing. But that doesn't, in my
submission, affect the approach that the Court should take to somebody who becomes aware
of an order that says you can set it aside on 24 hours' notice, and makes the application that
she has on more than 24 hours' notice.

D And My Lady has the point that as it happens, the claimant's counsel were aware of mine
and Mr Greenhall's involvement and I corresponded directly with them at the end of the last
working week. So they technically they – the intention of Ms Branch to oppose, and the
fact that she had counsel instructed, was known to the claimants for longer than the Court
required parties to give, or people to give, if they wish to become involved.

E And My Lady has the point – well to take as an examples paragraphs five and six of
Johnson J's order, those are terms that the claimants asked for.

MRS JUSTICE HILL: Also, one thing I reflected on over the short adjournment a little bit was that
the wording of 40.9 refers to somebody having the ability, if they're directly affected, to
apply to have the order set aside.

F MR SIMBLET: Yes.

A MRS JUSTICE HILL: Or varied. And effectively it might be construed that the claimant's application is an application to vary the current order.

MR SIMBLET: Yes.

MRS JUSTICE HILL: And therefore there is congruency there.

B MR SIMBLET: Yes.

MRS JUSTICE HILL: I had sort of understood you were applying for the initial order effectively to be set aside, but I do not know how we can set it aside. It is going to lapse on Tuesday.

MR SIMBLET: She has lived with it for 363 days, 358 days, I don't think Ms Branch is going to worry about the remaining seven.

C MRS JUSTICE HILL: But I mean if one were to try and understand what the neatest procedural route is to your client having the right to make some submissions was, and if I was nervous about the proposition that there is a generic right-

MR SIMBLET: A free for all.

D MRS JUSTICE HILL: Well a generic right to be heard in any event. A free for all if you like. But one way of trying to achieve some fair route through this might be to say that what Ms Stacey is really doing is applying to vary the current order because she is applying to renew it and vary its terms in some respects. And therefore we are within 40.9 that way?

MR SIMBLET: Yes. And of course-

E MRS JUSTICE HILL: I do not know if that is right or not.

MR SIMBLET: And the other thing is the definition of protestors point, is a new one. That is not in a – the new definition of protestors is not something that was known about a year ago or months ago, it's relatively recent in the development of this application. So that has a bearing also on, as it were, what Ms Branch knew or did know and whether she'd want to be involved. I'm sorry, I think I interrupted My Lady when you about to say something more valuable than what I've just submitted.

F MRS JUSTICE HILL: No, I am sure I was not. But I am certainly troubled at the proposition that there is no procedural space for your client at all. Because if Ms Stacey's submissions at their highest are correct, and I am not sure she puts it entirely in this high way, but at their highest, you have no *locus* at all until the order has been made.

G MR SIMBLET: Yes.

MRS JUSTICE HILL: Until the new order has been made.

H MR SIMBLET: Yes.

A MRS JUSTICE HILL: Because I did understand part of your submissions were that 40.9 only takes effect when an order has been made.

MS STACEY: Perhaps I can clarify that we've reflected upon it overnight as well. So that I can clarify what-

B MRS JUSTICE HILL: I mean in the context in particular of a persons unknown case. I mean it might be that there is an understanding about how a 40.9 operates when it is a conventional *inter partes* claim where there is a road traffic accident and then an insurer after the event comes to fray, if you like. But in the context of a persons unknown?

C MS STACEY: Well My Lady, shall I just explain what we say about continuation versus new order, and then what we say about 40.9?

MRS JUSTICE HILL: I think this is helpful, Mr Simblet, so forgive me.

MS STACEY: Yes, I was going to come back on it in reply because I thought that it was more appropriate, but given that you're having the debate now, so that everyone knows what we say. So My Lady you accused me of-

D MRS JUSTICE HILL: I hope not.

MS STACEY: Of trying to have my cake and eat it.

MRS JUSTICE HILL: I did not mean to accuse you of anything.

E MS STACEY: No, but on the back of that, I think it was fair. And thought's been given as to – this is stuff – none of this is easy. So our position is, having thought about it over lunch, that we referred to this application or this hearing as a review, and we think that's quite right. Because what you're doing is reviewing. What are you reviewing? You're reviewing the existing injunctions, yes, which we seek the continuation of on materially, or identical terms. Apart from the one tiny variation. Which Ms Branch has no *locus* to make representations in relation to.

F So you are reviewing the existing injunctions. The injunctions are the same, but the mechanism by which you give us what we want, if you like, would be by way of an extension, and that is by virtue of a new order. So it seems to me that there has to be a new order, regardless of my point about it's a review therefore it continues. Technically speaking, we are reviewing what's gone before because we're reviewing existing injunctions. But by virtue of a new order. If the continuation is to be granted. And I think that's where Your Ladyship was, and I think technically Your Ladyship was right about that. But that doesn't mean I depart from my characterisation of it as a review, because you

H

A are still reviewing the existing injunction.

MRS JUSTICE HILL: But what I am trying to grapple with is how does that fit with 40.9?

B MS STACEY: I know. Now, I – we say you can't get away from the fact that you need a new order to give us what we're asking for. And if you test that by looking at what would happen, it would be an order, if we're right, by a new Judge, albeit of an existing injunction on materially identical terms. There is one amendment, so Your Ladyship's point on variation is valid, but that variation only applies to one element of it in respect of which Ms Branch hasn't any standing.

C MRS JUSTICE HILL: Well does it not apply to the temporal limit? Even if I give you an entirely new order that is absolutely identical to the Johnson J or Bennathan J orders, they will be different in temporal scope will they not?

MS STACEY: Yes.

MRS JUSTICE HILL: Because I am varying them to impose the 2024 deadline.

D MS STACEY: You're varying the existing – that's right. You're varying the existing injunction.

MRS JUSTICE HILL: Even if it was absolutely otherwise identical.

E MS STACEY: For the purposes of granted that extended period. Yes, I accept that. But can I just say this? In terms of the queasiness perhaps that the Court has, the concept of the [inaudible] being there, the answer to that – I characterise that as a time limit point. We're not saying that Ms Branch couldn't come to Court. She could either have come earlier or she could come later. It's just simply the now, the here and now, the way in which it's been done at this point in time, that we are troubled with. So it's not a shutting out; it's a when-

MRS JUSTICE HILL: So you say 40.9 would have bitten for anything in the last 300 and something days?

F MS STACEY: Yes. Exactly.

MRS JUSTICE HILL: And it bites now, but only really for the next three days or whatever it is.

G MS STACEY: Exactly. And that's by virtue of – and there can be, you know, we say no particular sympathy in relation to that. Because she knew about it, she could have brought it earlier, but chose not to. But one has to proceed upon a principled basis. And the objection that we are raising in relation to this is look at 40.9, we see what it provides for. And it doesn't seem to have contemplated this kind of scenario, but My Lady you are left with the words of that provision which seem to us to be clear. It's a variation, or discharge, or an order. And the order, and it's the submission I made to Your Ladyship before lunch, that you

A currently have in place, or the orders, are Johnson J and Bennathan J.

MRS JUSTICE HILL: No, I see that. I understand. That is helpful, thank you.

MS STACEY: That's it. And its consequences are not so alarming, if you accept the proposition that she's not going to be shut out for all time, it's just timing. I hope that helps.

B MRS JUSTICE HILL: It does.

MR SIMBLET: Well My Lady, the extent to which it doesn't help is this: The claimants are saying you should make new orders, well to use your words, My Lady, even if they are identical the timings are different, that they should make new orders and Ms Branch cannot be heard in opposition to those orders. What they say is that although there is a hearing today at which the Court is considering exactly whether to make new orders, there should be another hearing on any day that isn't today where Ms Branch comes along and tries to set that order aside. How can that be a more efficient or sensible way of proceeding?

C MRS JUSTICE HILL: Is another way of conceptualising this, and I am afraid this is what is causing me some difficulty, that you have before me an application under 40.9 to vary the existing order or set it aside. Okay? Just hear me out. And in the course of that you are making principled submissions about why the last order should be varied or set aside. But in fact the substance of those submissions is exactly the same as what you would say in relation to the future order?

D MRS JUSTICE HILL: Yes.

E MRS JUSTICE HILL: And so therefore, if you are correct that there is a general discretion to hear a member of the public without meeting the 40.9 test, because it is an *ex parte* persons unknown injunction, that that is a sort of case management approach that could be taken?

F MR SIMBLET: Yes. I – and although I said yes to My Lady's conceptualisation of you're making a 40.9 application. I'm only really making a 40.9 application because the Court has suggested that that might be the procedural route in that avoids the situation which is my primary position, which is that on an application for new orders to be made *ex parte*, which is what this is, that somebody is entitled to come along and say, 'I want to be heard'.

G MRS JUSTICE HILL: But there is a dispute between you about that and Ms Stacey highlights that you provided no direct authority for that. She takes issue with your pre-40.9 position.

H MR SIMBLET: Yes, I understand that. But – well let's – let's assume she's right. What her submission is then is that Courts can only allow injunctions that effect persons unknown that everybody says have very wide affects, in circumstances where only the claimant gets

A to tell the Court what should happen. That's why I finished before lunch with that that goes against every notion of justice that we-

MRS JUSTICE HILL: Or any named defendant. She would say if there was a named defendant.

B MR SIMBLET: Yes, well there isn't a named defendant. So in any case, in this injunction – let's - I'll meet the case that she's come to make. She's not saying this, there are no named defendants. Her case is that she is entitled to address you and nobody else is.

MRS JUSTICE HILL: And that you can only come back after the event?

MR SIMBLET: Yes. And that's – that is a, to paragraph Sedley LJ in a case, is a proposition that needs only to be stated to be rejected.

C MRS JUSTICE HILL: Thank you.

D MR SIMBLET: And if that is her case, then don't give her her injunction. Because it actually offends against the rule of law and the requirement that those affected by orders be entitled to say what they wish to have – wish to say to resist them. That is to say that we live in a situation where an oil company can go around and say what everyone else has got to do. And the only filter on that is a Judge who may have the time that you have given to this, and the ability to give it, or may, like Johnson J, be a Judge who's got an appointment to go to and has to leave and give it very short consideration. Which is the evidence, uncontested evidence, of Ms Freeall.

E MRS JUSTICE HILL: Putting those points to one side though, the... I mean I will reflect further on what is being said, but on any view there is a question surely, Ms Stacey, about whether it is right that an *ex parte* persons unknown order can only be challenged after the event. I mean unless I am going unduly back to first principles, to submit that an *ex parte* persons unknown injunction that binds potentially thousands of people, can be only challenged after the event. I mean – and I appreciate we are doing this very discursively and forgive me if this feels like some Socratic discussion, but it is a bit because I do not believe anybody has really yet had to reflect on this particular – I mean unless I am right, I do not think this, the combination of a renewal or review, and 40.9 has been dealt with. Because nobody, I do not think you have told me yet, has had a renewal or review hearing at which a 40.9 person has arrived?

G MS STACEY: No.

MRS JUSTICE HILL: So the only time 40.9 has come into play has been when-

H MS STACEY: An order has been granted and somebody has come up after the order's been

A originally granted and made an application.

MRS JUSTICE HILL: Is that the Ritchie scenario in *Esso*?

MR SIMBLET: That is Ritchie in *Esso*, the people turned up at the return date.

MRS JUSTICE HILL: Yes, so after the interim order.

B MS STACEY: That's what I meant by originally. It's the original order.

MRS JUSTICE HILL: So the emergency order had been made and then they turned up at the return date. And the *National Highways*, Bennathan J example?

C MS STACEY: Yes. My Lady, it's an unusual space, persons unknown. Challenge has been made as to the appropriate nature of it, but Cameron – this jurisdiction is recognised at the highest level, the Supreme Court has endorsed that in appropriate circumstances, which we say apply here, 'It is permissible and there is jurisdiction to bring a claim against persons who are identifiable but have not yet been identified. As long as they are appropriately defined, see the *Canada Goose* guidance', okay? So in that context, if this were a starting from scratch application for an injunction, it stands to reason that the persons unknown would be defined by reference to the offending conduct which falls the subject of the description. No one would expect people to be there. Where we are now, we are essentially risking, and this is back to the new order continuation for a variation of the existing order, on the basis that there remains a continued threat. The effect of that is to grant an injunction going forward. We're in the same space as we would be back at the beginning, albeit the test of new and re-hearing we discussed. But there are no named persons that [inaudible] now. So we're in exactly the same position. Therefore it's not surprising, in my submission, to expect that any persons would come to court after such an order being granted.

D

E MRS JUSTICE HILL: No, I see that.

F MS STACEY: So there's no conceptual problem with that, My Lady, on a review. That's why I say it's timing, we're not precluding. If one accepts the proposition that you can grant an injunction on the back of proceedings initiated against persons unknown-

MRS JUSTICE HILL: *Ex parte*.

G MS STACEY: *Ex parte*.

MRS JUSTICE HILL: Yes. No, I agree.

MS STACEY: Which Mr Simblet takes issue with, but frankly it's on the face on the authorities. I don't see that that can be made out.

H MRS JUSTICE HILL: So you say broadly, in a case of this nature, there is normally an emergency

A injunction.

MS STACEY: Yes.

MRS JUSTICE HILL: There is then an interim one.

MS STACEY: Yes.

B MRS JUSTICE HILL: And then there is some kind of return date.

MS STACEY: Exactly.

MRS JUSTICE HILL: And there is some kind of review. And you say at each point where an order has been made, there is the 40.9 right.

MS STACEY: Exactly.

C MRS JUSTICE HILL: But just on this case, the timing goes like this-

MS STACEY: Exactly.

MRS JUSTICE HILL: And the opportunity is properly brought there, and we are now here.

MS STACEY: And he might say oh well this is all a bit unfair because we're here – we are where we are which is a phrase that's been repeated throughout the course of the last two days.

D MRS JUSTICE HILL: Including by me.

MS STACEY: That this needs to be dealt with on a principled basis because of the wider application. One needs to understand what the true affect of 40.9 is. Because otherwise it's a danger of being unruly. And one needs to understand in what circumstance a party can pitch up and make submissions to the Court. So the concept I say is not problematic entirely and outwith the jurisdiction.

E MRS JUSTICE HILL: No, I see that now. Forgive me, I see that. In a different way now. And you say it is just an unfortunate consequence of the timing in this case.

MS STACEY: Yes.

F MRS JUSTICE HILL: But again, going round in circles, that probably comes back to the 24-hour provision. Does it not?

MR SIMBLET: They have got what they've asked for. And they now don't like it.

MRS JUSTICE HILL: It comes back to that does it not?

G MS STACEY: It's not that we've got what we asked for.

MRS JUSTICE HILL: Because, forgive me. Have we not got here – we have got a marrying up here of the 24-hour provision that allows you to set it aside with the review hearing. You have got the alignment of those two things, and they may not be a round peg in a round hole.

H

A MS STACEY: My Lady, yes. But the application I'd remind Your Ladyship, isn't being brought on the basis of clause five or six of the order that we are-

B MRS JUSTICE HILL: No, but the logic of the evidence that has been provided is to that effect. Because the evidence provided by Ms Branch and Ms Freeall today, Ms Branch in particular, was that they deliberately waited until 24 – or they understood that the 24-hour provision before the hearing, was the most sensible time to make this application. That is the thrust of Ms Branch's evidence.

C MS STACEY: I understand that, My Lady, but one – in this space where there's jurisdiction to bring proceedings against persons unknown when – one has to proceed on those – back to my principled basis.

MRS JUSTICE HILL: Well that is what I am trying to do.

D MS STACEY: Yes. And it's not sufficient that Mr Simblet's client to say well you can hear anyone because, well in the absence of something to point to, in what circumstances can you simply pitch up and speak, in particular when they're not saying they're a person unknown who needs to be joined. There's 40.9. And 40.9 provides for the level of protection which there otherwise not be.

E And it provides a degree of comfort to *Barking* that *Barking*, as we looked at before lunch, doesn't say one can employ that 40.9 process at any particular point in time. It simply says in the – it was in the context of an injunction being granted. And that was entirely consistent with what I was telling Your Ladyship about if we were at a standing start, you'd get your injunction of the Court satisfied. That person could come to Court and challenge it. We are in that same situation now where we're asking you to review. That would lead to a new order [inaudible] albeit one that reviews what's gone before. And once that's granted, then Ms Branch will have her right.

F And you might consider that's all very unfortunate because it's a waste of everyone's time, but if that's what the law provides for, and is deficient, then it's not for us to make the law; it's for the legislators to amend or the rules to be changed.

G MR SIMBLET: Well I have [inaudible] that. We are half an hour – we are halfway into the time I said I would be, so I – and Ms Stacey has used quite a lot of that.

MRS JUSTICE HILL: Well at my invitation.

[Crosstalk]

H MR SIMBLET: Yes, the Court's invitation, but – so therefore I may want to go on a bit longer is

A what I am going to say. And not... But-

MRS JUSTICE HILL: I am not going to hold you to it, Mr Simblet.

B MR SIMBLET: In relation to the fact – the fact is that that – those submissions confuse jurisdiction and technical ability of the Court to proceed in that way, or a party to proceed in that way, with the practicalities that follow from where somebody chooses to use that jurisdiction in that way. An illustration of the point. If Shell had named some defendants like Transport for London did, Ms Stacey would be able to say, there being no opposition to her order, ‘Well these people were given the chance to come to Court. The injunction was made, they didn’t say anything in opposition’, or anything sensible in opposition I think was her submission. And, ‘Therefore, the order as made is now one that can properly be looked by the Court as *inter partes* and that’s why the review exercise is one of review as per Kavanaugh J’. She could have done that.

C They chose not to do that. *Canada Goose* makes clear that there are – where parties choose not to do that, there are enhanced procedural responsibilities, and that is what paragraph I think 82 in *Canada Goose* is all about. One – essentially, a party who proceeds with an application for a persons unknown injunction, accepts a number of either expressly and impliedly accepts a number of – they may need to make a number of concessions procedurally as the price for being permitted to proceed in that way.

D And that’s what *Canada Goose* in the Court of Appeal and Nicklin[?] J’s first instance decision were all about. It’s about the problems that are caused in injunctions where people are not properly before the Court. Now, the law has moved slightly from that, in that in the *Barking* case the Master of the Rolls departed from a judgment of the previous Master of the Rolls, because it was the Master of the Rolls also in – a different Master of the Rolls in *Canada Goose*, but nevertheless two very authoritative senior Judges in the chair in each of those cases. And said that there is jurisdiction to grant an injunctions against persons unknown because the statutory power to grant an injunction under, I think it’s Section 37 of the Supreme Courts Act, is so wide.

E So there’s jurisdiction. I don’t dispute with Ms Stacey there’s jurisdiction. Where we part company is that as a consequence of choosing to proceed in that way, her clients may well have to accept interventions that may in other circumstances be less tolerated by the Courts.

F So for instance, a party that is – or a person that is made a party to proceedings, and judgment is reached in those proceedings, cannot seek to go behind the factual basis of

A those proceedings.

B And that's what I alluded to yesterday to, to the *Hunter -v- Chief Constable of West Midlands*, and all of those cases that talked about it being an abuse of process to attempt to bring a collateral challenge or to relitigate matters. There may also be, as I'm put in my notes, some form of issue estoppel. But that doesn't apply here because nobody was before the Court apart from the claimants. So since nobody is before the Court and *Canada Goose* and *Barking* make plain that anybody who is affected should be given the opportunity to come before the Court, we're here now. We're coming before the Court when the Court is looking at this matter. When better to come?

C Well Ms Stacey's analysis, you come after the Court's done it. Well that flies in the face, in my submission, of any engagement with CPR Part 1, let alone any succeeding provisions of the procedural rules about how cases can be effectively case managed. And it comes back to – or if I can give you an example of this, what I have said in my note about the continuing availability of representative proceedings.

D It is perfectly open to a claimant, and you might have thought that these claimants who allege a conspiracy would have thought that if they could make out their conspiracy they would think that Rule 19.6 was one of the things that addressed this position. It is open to a claimant to say these people have a common interest in the proceedings, and to sue somebody in a representative capacity. They have chosen – they could have done that. And if they had done that, the submissions you'd be hearing would be different. But they haven't.

E And they come – I'm meeting, and you're dealing with My Lady, the case that they have put before the Court in the way they have put it before the Court. And if in fact Ms Stacey realises, as these two days evolve that actually it might have been better to do something different, that isn't a reason, in my submission, to, as it were, depart from what the Court ought otherwise to do in ensuring the overall fairness of coercive orders that the Court is being invited to make. So CPR 19.6 was available.

F But even in proceedings that begin against persons unknown, I did draw the Court's attention yesterday in – and supplied the authority of the *Ucock*[?] case and what Faulk J had done in that case. Where the proceedings had begun as a persons – have you got that in your authorities?

G
H MRS JUSTICE HILL: I have got that, yes.

A MR SIMBLET: Yes. The proceedings have begun as persons unknown injunctions, including with
claims of conspiracy. And as the case unfolded and in that period between *Canada Goose*
being decided and Barking and Dagenham going to the Court of Appeal, it emerged that
there were particular problems with simply proceeding in the way that they were with
B persons unknown. So what they chose to do was to add- apply to add a number of people
who they said should be defendants. And you can see, My Lady, I think I referred to this in
the email that I sent to Court about it, and to Ms Stacey about it, they applied to join a
number of people, and their names are set out at paragraph 14.

C They tried to join them on the basis of things that they said had happened there, and unlike
this case where these highly resources claimants, probably one of the richest companies in
Britain, seem unable to do the basic detective work to tell the Court who it is they wish to
litigate against, and is somehow sitting and waiting for some sort of court orders to require
the police to do their job for them.

D These – the claimants in *Ucock*_had made their own researches, looked at videos things
happening at the site and so on, and they – on the basis of what they said, that material on
the internet or footage that they seen and so on, disclosed, they applied to add people whom
they identified. Some by name, some in fact by – I mean I can't turn the particular page up
now, but as an example, it's not the – I don't say it's expressed, the person wearing the blue
E coat who did this on this date, which is – which *Cameron* accepts as a way that somebody
may be identified and brought before the Court.

F So what they did was they moved from a persons unknown, an injunction that brought
claims only against persons unknown plus those who had applied to be joined who the
defendants seven to I think 12, or seven to 13 who were then deleted. And they applied to
join specifically the other people. So they then had some people.

G These claimants can't be bothered with that. What these claimants are doing is saying that
rather than the – rather than do what the Courts generally expect to happen in a case, where
the parties say who the other parties are, they are saying that it's all right to sit on this order
for about a year while they seek additional orders from the police to identify those whom
they say they will want to proceed against by trial. We've used the metaphor in these
proceedings about how we're doing things somewhat back to front. That is a very good
metaphor for how the claimants are proceedings. Normally you say who it is you want to
H sue, what remedy you want and why you want it.

A Here the claimants say we just want some sort of remedy against people generally. We
can't tell you exactly what the people generally have in common, and I'm going to move to
that point in a moment, but until the police help us we can't do it. And for that – and
B notwithstanding that, you the Court should indulge us and stop other people opposing the
orders that we seek. It's not how litigation should be conducted and if in fact it is being
submitted as it is, that when they apply for orders from the Court the Court should refuse to
hear those that are not brought before the Court by the claimants, the inevitable injustice
that that approach would create is clear and obvious and I propose to say no more about it.
C So that is why we are here and that is, if you consider 40.9 is the tidy procedural route to
give us some *locus* in the proceedings, we're prepared to use it. But we say that we are not
– that there's – we cannot fail for reasons either of lateness, because you can't be late to
something that hasn't happened. Or because there is some sort of magical period either side
of a court hearing that the claimants want within which somebody who wants to use the
D 40.9 jurisdiction has to apply. That's verging, in my submission, on the absurd.
I'm going to move then to the problems with the – I've got some points on the terms of the
injunctions themselves.

MRS JUSTICE HILL: Just before you leave that, Mr Simblet, just – can I ask you both to reflect
on this: In *Breen* the decision that was reached by Ritchie J was, if I have understood the
E judgment correctly, between the making of the *ex parte* and the making of the return date
injunction.

MR SIMBLET: As I understood it, the people pitched up to the return date injunction.

MRS JUSTICE HILL: Which he adjourned off because there was, funnily enough, insufficient
court time.

F MR SIMBLET: Yes. He did what you suggested you might do yesterday. I noticed that when I
was re-reading it overnight.

MRS JUSTICE HILL: Well I had not realised he had done that but I am glad to see it. But on a
serious note, if one looks at the way his judgment is written, and it is at page 460 of the
G authorities, he deals with that fact at paragraph 10, that the interested persons had turned up
at the hearing, did not want to be joined, but did want to make representations.

MR SIMBLET: Yes.

MRS JUSTICE HILL: And it was, if I have understood it correctly, as he says at paragraph 11,
insufficient time to deal with these matters. It is not quite clear, but there was a full return
H

A date he describes on 5 October.

MR SIMBLET: Yes.

MRS JUSTICE HILL: So what-

MR SIMBLET: He adjourned the *ex parte* injunction and had the return date on 5 October with

B them intervening on the 40.9 is my understanding of what the judgment says.

MRS JUSTICE HILL: Yes. And then towards the end, if one sees the ruling at 67, the decision he gave was to allow them to make representations, paragraph 67, at the return date on the injunction.

MR SIMBLET: Yes.

C MRS JUSTICE HILL: So he clearly seems to have been of the view that although the *ex parte* order had been made, 40.9 permitted them to make representations at the return date. Is that not a similar procedural space to where I am, albeit I am between a return date and a review.

MR SIMBLET: Well-

D MRS JUSTICE HILL: So, forgive me, does he use of 40.9 here not illustrate that he at least was prepared to accept that it is not entirely backward facing?

MR SIMBLET: Yes.

MRS JUSTICE HILL: And does not entirely relate back to an existing order? Because he was plainly, as far as I can see, allowing the interested person to make a representation at the

E return date. So the interested person was clearly then making submissions about whether at the return date the *ex parte* injunction should be continued or not.

MR SIMBLET: Yes. I'm nodding, I haven't thought of that point myself, but as it does provide support for the fact that 40.9 does not confine you to an order that's already been made.

MRS JUSTICE HILL: Despite on the face of it, the wording suggesting it might do.

F MR SIMBLET: Yes.

MRS JUSTICE HILL: Or should do.

MR SIMBLET: So it's a – if I may say so, My Lady, it's a cleverer point than one I had identified, but it appears to be right. And it appears to reflect what the Court did.

G MRS JUSTICE HILL: I need to look in just in his judgment more carefully but his is the closest to our detailed consideration of 40.9 in this framework?

MR SIMBLET: Yes, I agree. And it reinforces, in my submission, the proposition, and he identifies it himself, that Courts should want to hear from people where there is a substantial public interest point or a civil liberties point being raised by the interested person.

H

A MRS JUSTICE HILL: In the search for principle in this, the distinction between an *ex parte* and a return date, and a return and a review, where the only changing factor is where the interested person comes in, it seems hard to discern.

MR SIMBLET: Yes. Ms Stacey keeps asking the Court to approach this on a principled basis.

B MRS JUSTICE HILL: Well I am trying to.

MR SIMBLET: But is unable – but actually is unable to formulate exactly what that principle should be, other than to say it should be any day except when the Court's dealing with her application.

MRS JUSTICE HILL: No, she says the strict wording of 40.9 is-

C MR SIMBLET: Yes. No, for the – that's what she says. For those reasons.

MRS JUSTICE HILL: Too late for last year and too early for this year.

MR SIMBLET: Exactly. So I say that's the only time that it can be done is when the Court's not dealing with it. That's the logic. That's where it leads to.

MRS JUSTICE HILL: Well I am not sure it does-

D MR SIMBLET: Well I may be bounderalising[?] her submissions for dramatic effect, but that is – it's not wrong. You couldn't do it – we're too late for yesterday and we're too early for tomorrow. That's how you-

MRS JUSTICE HILL: No, you are too late for last April.

E MR SIMBLET: Yes, well...

MRS JUSTICE HILL: Is what she says.

MR SIMBLET: Yes.

MRS JUSTICE HILL: And May are you not? I mean that is the serious point.

MS STACEY: Well there's a sliding scale isn't there.

F MRS JUSTICE HILL: It is a timing point.

MS STACEY: I haven't identified any particular point in time where they're too late. But yes.

MRS JUSTICE HILL: But it is today.

MS STACEY: But it is today. You have my submissions.

G MRS JUSTICE HILL: No I do. And I think we are all searching for a principled basis in an area that is not very clear.

MS STACEY: When I'm talking about principle, I'm talking one has to construe the rule, and that's what you're required to do. And we wanted – that's why we – because the wider implications, not just the least [inaudible]. There are numerous [inaudible] the Rule one

H

A must grapple with.

MRS JUSTICE HILL: Well I hope you understand that that is why I am trying to do that.

MS STACEY: I fully understand that, My Lady.

MRS JUSTICE HILL: My invitation to you perhaps is to look again at *Breen* because it does look

B as if-

MS STACEY: I am looking at it now.

MRS JUSTICE HILL: -A similar point was taken. You have still got your time, Mr Simblet, I am not knocking any-

MR SIMBLET: No, I know.

C MRS JUSTICE HILL: My interventions. Carry on.

MR SIMBLET: Thank you. My Lady, I'll move then to – well they're related points.

MRS JUSTICE HILL: Yes.

MR SIMBLET: But in terms of the claimants' lack of a case in relation to their conspiracy claim.

MRS JUSTICE HILL: Thank you.

D MR SIMBLET: And they're related – it's related in this way to the Section 12 issue because of course the Section 12 issue informs what threshold must be surmounted by the claimants to show their case or their entitlement to the injunction.

MRS JUSTICE HILL: Well it is a difference between serious issue to be tried.

E MR SIMBLET: Yes.

MRS JUSTICE HILL: And likely to succeed.

MR SIMBLET: Absolutely. Yes. You've got the point.

MRS JUSTICE HILL: Yes.

MR SIMBLET: In a sense both Ms Stacey and myself elide this issue and want you to do different

F things. Ms Stacey says it's sufficient to show American [inaudible], I mean serious issue to be tried. That test is surmounted. I say they haven't got a – they haven't got – there isn't a serious issue to be tried, and in fact in any event the threshold is likely to succeed under the Section 12 (3) test. So – but whichever test it is, in my submission there are some very

G serious, and I use the phrase conceptual, and practical difficulties with the underlying basis of the petrol stations injunctions. If I can park – I will explain what I mean but I will also narrow the issues on the Haven and the Tower injunction that where those – those injunctions – I mean subject to certain arguments about the terms and whether the underlying case justifies all of the terms, I've got a couple of submissions on that, but the –

H

A it is not difficult to see how somebody who produces evidence that satisfies the Court of imminent trespass can obtain an injunction in the tort of trespass that restrains people from coming onto its land.

MRS JUSTICE HILL: And nuisance I think. Was it not both?

B MR SIMBLET: Yes. But unreasonable use of land. But the prohibitions are more likely to – more – there's a closer nexus between the prohibitions and the tort of trespass in actual fact. But let's – and in a sense nuisance was originally sought as also in the act on the highway and this is where they got into looking into the stuff about the gateways and so on. But you've got the map and so on. Those sorts of map issues, it's – I don't say that they cannot show any sort of case in trespass. But I do say that their claim on the petrol stations has very very serious problems. The petrol stations injunction is not based on trespass or nuisance, and Ms Stacey clarified her position on that yesterday. It is based on what is said to be a claim in conspiracy.

C
D MRS JUSTICE HILL: Can I just double-check, Ms Stacey forgive me, I will have to check back on my notes. The Tower and Haven injunctions, do they solely relate to the owned land?

MS STACEY: As the terms of the orders granted.

MRS JUSTICE HILL: Yes.

MS STACEY: Yes. Because it's the entrances, your-

E MR SIMBLET: Yes.

MRS JUSTICE HILL: That was the debate with Bennathan J was it, about the map?

MS STACEY: Indeed. The broader proceedings refer to public nuisance. They haven't amended, but all of it's been granted on a-

MRS JUSTICE HILL: But for my purposes?

F MS STACEY: For your purposes, My Lady, yes.

MRS JUSTICE HILL: There is – so there is no public highway issue at all?

MS STACEY: No. You'll recall the map, the plan with the markings that you were shown electronically. And there's no part of the public highway.

G MRS JUSTICE HILL: I had a helpful copy from you.

MS STACEY: Exactly.

MRS JUSTICE HILL: Yes.

MS STACEY: Yes, there's no public highway. Public highway is actually covered by the [inaudible] that's referenced, so the road leading up to the Haven is covered by that. So far

H

A as Tower is concerned, it's just the entrances.

MRS JUSTICE HILL: I understand, thank you. And so Mr Simblet, as far as your initial skeleton is concerned, having had that point clarified?

MR SIMBLET: Yes.

B MRS JUSTICE HILL: Paragraph 49 up to 59, that deal with public highway.

MR SIMBLET: Yes. If what Ms Stacey has made clear is right, and I can't say – well I accept what she says about the effects of the injunction. If we are only talking about-

MRS JUSTICE HILL: For interim purposes I think.

MR SIMBLET: Yes. And for interim purposes that'll be sufficient, then that follows, My Lady, of

C course.

MRS JUSTICE HILL: And as far as land which is not part of the public highways, so your submissions at 60 and 61, this does feature in the petrol stations claim. But your main point about the petrol stations one is the conspiracy point, is that right?

D MR SIMBLET: Yes. I mean the – we – I will look at, I will take you to the terms of the injunction and perhaps deal with the non-public highway points there, but it's the – the underlying basis upon-

MRS JUSTICE HILL: No forgive me, Ms Stacey clarified yesterday in relation to petrol stations, your only tort is unlawful [inaudible] conspiracy.

E MR SIMBLET: Yes.

MRS JUSTICE HILL: And so where you have made submissions in your written argument, Mr Simblet, at 60 and 61 about trespass and private nuisance, they do not bite on the petrol stations.

MR SIMBLET: I was worrying about a danger I don't face.

F MRS JUSTICE HILL: Happy to focus these-

MR SIMBLET: Happy to narrow the issues on that basis.

MRS JUSTICE HILL: But that is correct, Ms Stacey, in terms of the petrol station tort, is it not? It is only unlawful because-

G MS STACEY: The only tort. The cause of action is conspiracy.

MRS JUSTICE HILL: At all, let alone for interim purposes.

MS STACEY: No.

MRS JUSTICE HILL: Yes, thank you.

MR SIMBLET: And thank you to Ms Stacey. With that clarification, when you come to approach

H

A what is the serious issue to be tried, the starting point is that claimants must be able to show
the Court some sort of case. The case that they rely on is in the tort of conspiracy. We
looked by recourse to some of the authorities that I'd produced, or identified, to – at some
of the ingredients of conspiracy and there are particular problems with those and I'll elide
B them. Refer to those briefly in a moment. But the more fundamental point is that
conspiracy to cause loss by unlawful means is an intention tort. In this it is a tort of some
seriousness. It is a tort in which the claimants contend-

MRS JUSTICE HILL: It is an intentional tort. I cannot quite-

MR SIMBLET: Sorry, it's a tort of – involving serious allegations. And in this case, the serious
C allegations relied upon by the claimants are said to be criminal acts. Or to include criminal
acts.

MRS JUSTICE HILL: But did the submission yesterday not focus solely on civil acts?

MS STACEY: Yes.

MR SIMBLET: But there were things – but they are civil – they are civil wrongs, but they also are
D criminal. So smashing up a petrol pump, it's said.

MRS JUSTICE HILL: But forgive me, in the skeleton argument advanced to Johnson J, my
recollection is that the focus of the submissions by, Ms Stacey was it you or your colleague?
I cannot remember.

E MS STACEY: Mr Watkin.

MRS JUSTICE HILL: Was solely on civil.

MS STACEY: Indeed. He made the point that these would also be, but for the present purposes he
specifically said we do not rely on the fact that they are criminal. We rely on the torts.

MR SIMBLET: Yes, I understand – we're not at any cross purposes, My Lady. And what I am
F trying to say is that what is alleged is serious allegations. And that means such as the
obligation to plead fraud, where that's relied on. Or, as My Lady will know, in relation to
the tort of misfeasance in public office.

MS STACEY: My Lady, sorry, we're not relying on fraud or misuse of-

G MR SIMBLET: I know you're not. I'm sorry, yesterday wasn't entirely clear what the
submissions were as to what the case was on this, but I – what I am trying to make the point
is that when people make serious allegations which they are required to back up by a
statement of truth on a claim form. I'm waiting for objection to be made to that. The
Courts expect the party making the allegations to set them out clearly and squarely. And I

A shouldn't need to cite case law to make that point. I can use the example of misfeasance in public office because My Lady may be familiar with the case of *Watkins* where that is said, and there are other similar cases that say that where allegations of serious conduct are alleged, there needs to be proper particularity.

B Added to that, My Lady, and this is the point that I put in my skeleton submissions, where a case is based on an agreement by conduct, the CPR requires that the details of who the parties to that agreement are, are specifically pleaded. I am trying now to find if I put it in the – it's [Inaudible] 16, point-

MRS JUSTICE HILL: Is this in your skeleton?

C MR SIMBLET: It is in my skeleton but now I can't find it. I've set it out in the skeleton. I'm sorry, My Lady, I don't want to be grinding to a half.

MRS JUSTICE HILL: It is 16.7.5, paragraph 88.

MR SIMBLET: 88, thank you. Yes. 16.7.5 and I have set out the material – the parts of that.

D 'The particulars of claim must specify the conduct relied on and state by whom, when and where the acts constituting the conduct were done'. And also – and it's the by whom that has a bearing here. Because what you have in the particulars of claim, and indeed what you have in the new particulars of claim because my learned friend has applied to amend their particulars of claim, is no detail of what the conspiracy is, who it involves, what its objects are, how they agreed, how this all came about. It's completely unpleaded.

E We were told yesterday that it is the claimants' intention to proceed to trial and seek a final injunction. And irrespective of my *locus* in these proceedings, or Ms Branch's *locus* in this proceedings, the current particulars of claim are non-compliant and should not be allowed to proceed much further in their current form. And one of the submissions I'm going to make, F I'll say it now and then come back to it, is that if you overlook for present purposes, the lack of any details of who these conspirators are and what it is all about and so on, you – and you're being asked to produce some directions for trial.

G One of the directions that you should require is that full details are pleaded as to the nature of the conspiracy alleged. And if the claimants can't do that, then the Court by the trial will know exactly what the – the extent to which they have or don't have a case. But for now I make the point that conduct of this sort is required to be specifically pleaded, and a conspiracy, very serious allegation, is specifically required to be pleaded at least to the extent of those mandatory terms in the CPR, and the claimants have nothing of the sort.

A They cannot tell you the name of one conspirator.

Indeed their case is worse than that. Because what we are – what they seek to do by removing the definition of environmental from protestor is essentially to say that anybody who wants to demonstrate against Shell is part of a conspiracy, whatever their motives. B And I touched on it this morning, it's an absurd position to contend that people that are protesting against the price of fuel at a petrol station are in any sort of agreement with environmental people, whether they are using the banner of Just Stop Oil or Extinction Rebellion, or just turning up themselves because they're concerned about the impending doom that we face as a species.

C To say that those people are conspiring with the cost of fuel people is absurd. It's just – it cannot satisfy the do they have a case point. It's ridiculous. And since it is ridiculous, then in my submission My Lady needs to reflect very carefully as to whether in fact the claimants have shown that there is a serious issue to be tried. They don't – no counsel feels D able to put his or her name to pleadings alleging what the conspiracy is or who the conspirators are. And I think My Lady picked upon the point yesterday that the claim form itself doesn't make clear what the cause of action is.

So the Court is not told on the claim form that there's a conspiracy, and in the particulars of claim, including in their draft amended form, what the conspiracy is. That's very difficult, E in my – it's very difficult in that situation, in my submission, to draw the conclusion that there is a serious issue to be tried on a claim of conspiracy.

But in fact the threshold they need to surmount is the likely to succeed test, the Section 12 (3) test, so I'll move to my submissions on that.

F MRS JUSTICE HILL: Just before you do, just so that I have got the clarity of it. Section 12 (3), does that only bite on the petrol stations?

MR SIMBLET: I would say it bites on all of them.

MRS JUSTICE HILL: Yes.

MR SIMBLET: But as you've heard, I'm not – for current purposes, I'm addressing the lack of a G case point on the petrol stations. So the – you will have to draw your own conclusion as to whether the claimants can show they're likely to proceed in Haven and Tower, but I haven't made any submissions about their lack of a case in that.

H MRS JUSTICE HILL: Ms Stacey, remind me, did 12 (3) even come up in the Bennathan J hearing?

A MS STACEY: Yes.

MRS JUSTICE HILL: It was addressed in the skeleton was it not?

MS STACEY: Yes, it was.

MRS JUSTICE HILL: But it did not seem to be the subject of as much discussion as in the

B Johnson J hearing?

MS STACEY: Forgive me, I just want to check before I say yes or no to that.

MR SIMBLET: I think My Lady's right, and while Ms Stacey checks, I think My Lady is right and I understand also that Bennathan J professed to apply the Section 12 (3) test rather than simply serious issue to be tried. But I'll be corrected on that if I'm wrong.

C MS STACEY: My Lady, 2338.

MRS JUSTICE HILL: All we have at-

[Crosstalk]

MRS JUSTICE HILL: Is on one view this section is not – I mean this is a solicitor's note of what

D he said.

MS STACEY: Exactly.

MRS JUSTICE HILL: On one view, this section is not really intended for cases like this, but on the basis of the Court of Appeal authority, means the Judge must follow.

MR SIMBLET: Yes.

E MS STACEY: So there was a – it was flagged. The fact that the law is in a slight state of flux in relation to it was flagged, but he proceeded on the basis that it applied. Without deciding the point.

MR SIMBLET: If it helps Ms Stacey, one of the things she's not facing here is an application that the order should be discharged for non-disclosure or anything like that. We're – you are –

F this comes back to which approach you should take, as a Judge being asked to re – to make fresh orders. I say you should apply the Section 12 (3) threshold and that the claimants cannot surmount it.

And I say that, and Ms Stacey's touched on the reason that impressed Bennathan J. I say that first because you are bound and you are bound by *Boyd -v- Ineos* where Section 12 (3) was stated in terms to be what the Court below had been grappling with. And where you can see from what was said by Longmore J in *Boyd*, that one of the reasons for the appeal succeeding was that the Judge had not properly applied, or not properly applied the

G Section 12 (3) test.

H

A And I took My Lady this morning to paragraph 50 when we were talking about the temporal
element. The other thing that is said in paragraph 50 was whether interim relief should be
continued in the light of Section 12 (3) HRA. It's not just something that was assumed to
B apply, it's something that the Court itself looked at and reached a decision on. And I am
supported in that being the proper reading of *Boyd -v- Ineos* by the grounds of appeal
document-

MRS JUSTICE HILL: Permission to appeal.

MR SIMBLET: Yes, those documents, which show that the Court itself decided that an aspect of
C Section 12 (3) was something that should, on reflection, be looked at and be part of the
appeal.

MRS JUSTICE HILL: So within the bundle, Mr Simblet, you've given me already I think A307.
No, you have given me-

MR SIMBLET: Those are just – those are not the page numbers for this case.

D MRS JUSTICE HILL: No, they are not. So – but they are unhelpfully close to the actual page
numbers. But you have given me, I think you gave me some in the bundle, did you give all
four yesterday?

MR SIMBLET: Yes.

E MRS JUSTICE HILL: Let me look. These show, do they, and Ms Stacey has these documents has
she?

MR SIMBLET: She has these documents. And what I say they say in short form is there were two
appellants, Mr Boyd and Mr Corré. Mr Corré was initially refused permission to appeal on
one of his points, the sections which engage Section 12. The Judge granted Mr Boyd
F permission to appeal on an aspect involving Section 12, and then she then revisited and
corrected – sorry, not corrected, revised, her permission order to allow Mr Corré to argue
the Section 12 – the consequences of the Section 12 point in his case. And we see that then
happening in *Boyd -v- Ineos*.

MRS JUSTICE HILL: So looking at what was numbered at 317, that is an order from Asplin LJ.

G MR SIMBLET: Asplin LJ, yes.

MRS JUSTICE HILL: It was held that there was a reasonable prospect of success in relation to
whether the Judge has directed himself properly on Section 12 (3).

H MR SIMBLET: Yes. And my points is well if Section 12 (3) doesn't apply, why would the – why
would a Court of Appeal Judge need to concern herself with whether that had been correctly

A applied. It's no more or no less than that, but it supports what is decided in *Ineos*.

B I've taken you to paragraph 50, also for My Lady's note paragraph 49, and the discussion by the Court between paragraphs 44 and 49, on the application of Section 12 (3). In particular the fact that one of the reasons the conspiracy to injure injunction was discharged in *Boyd -v- Ineos* was at 48. 'It is not just the trespass that is shown to be likely to be established, it is also the nature of the threat'. And how all of this evidence related to Section 12 (3) considerations at paragraph 49.

C So *Boyd -v- Ineos* was a case in which one of the reasons the grounds of appeal succeeded was because the evidence didn't meet the test required by Section 12 of the claimants being able to show they were likely to succeed in their claims. I think that's as much as I can say about that for the moment.

D I will also take My Lady to Warby J's decision which is in the same bundle of authorities at tab 10, page 315 it begins. My Lady can see at paragraphs four and five what the concern was on the part of the applicants for the injunction. Much of the discussion was about whether the claimants should in that case have been drawing the Court's attention to Section 12, which they hadn't. And Warby J said more about that at paragraphs 57-63.

MRS JUSTICE HILL: Sorry, which page am I on now, Mr Simblet?

MR SIMBLET: Page 333.

E MRS JUSTICE HILL: This is in *Asfaw*.

MR SIMBLET: *Asfaw*, sorry. Have I skipped too far quickly? We're in Warby J, so Warby J in *Asfaw*. I've taken My Lady to page 316, paragraphs four and five just to show what the case was about.

MRS JUSTICE HILL: Yes.

F MR SIMBLET: It's to show it's a protest case and that people doing things people didn't like outside a school. And then the Section 12 point is discussed on page 333 in the context of a complaint of material non-disclosure.

MRS JUSTICE HILL: Yes.

G MR SIMBLET: And I rely not so much on Warby J's consternation at this not being brought to the Court's attention, which isn't a complaint we make here, but on what he says about it at paragraphs 59 to 60 and 61. I've set out paragraph 60 in the skeleton, but also what Warby J had to say at 61 is of importance. 'Section 12 (3) may not be relevant to every antisocial behaviour injunction, there are no doubt many ways of behaving antisocially that

A do not involve speech or writing or other forms of expression. But there can be no doubt as to the materiality of Section 12 (3) in this case. It contains a statutory prohibition on the grant of a pretrial injunction which interferes with freedom of expression unless the Court is satisfied the claimant is likely to obtain a final injunction’.

B So an example there of a case involving freedom of expression, and I say to My Lady that the examples given in our skeleton argument of ways in which people are demonstrating, necessarily involve them publicising or doing something that amounts to a publication within Section 12 (3). Standing there holding up a placard. Or, to use the example that I
C raised yesterday, writing – one of the prohibitions in the injunction is writing on the – would be writing on a petrol station in a public place. I’ve put in the skeleton is it – what publication means for the tort of libel.

MRS JUSTICE HILL: That is the [Inaudible] point, yes?

MR SIMBLET: Yes. And it would be surprising if somebody were to write, ‘The Judge who dealt
D with my injunction proceedings is corrupt and I have evidence to show that, and his name is X’, and for the Judge to be unable to bring libel proceedings because that didn’t amount to a publication. It’s – it can hardly be not a publication – it can hardly be publication in the very generous way in which it is interpreted in the tort of libel, but not publication within the term properly understood under Section 12 (3).

E So the threshold is one of likely to succeed, and the claimants aren’t likely to succeed because they don’t – cannot show any conspiracy. And their actual submissions on what the nature of the threat, to use their words, but the nature of the people turning up to demonstrate is, is completely contradictory and counter – well contrary to any idea of what a conspiracy properly can be. It has to be an agreement to do things for a common purpose.
F And it’s not good enough simply to say these people are alleged to have damaged petrol pumps at Cobham Services and hammer the petrol pumps, and to say from that there must be some conspiracy of a widespread nature to involve every petrol station, over 1,000 of them, based on that conduct or the evidence that they’ve put in support.

G It just isn’t the – there isn’t the pleading to support it, and there must be the pleading to support it. So you can’t, in my submission, grant an injunction affecting the petrol stations. If, and I was going to move to my – some of the objections to some of the terms of the injunctions, but I’ll perhaps park – since I’ve come back to this point once already, I will say that what my submission is if you do grant some procedural indulgence to the claimants
H

A in this wholly unparticularised and wholly improperly pleaded case, you must bring that unacceptable state of affairs to an end fairly promptly and one of the terms upon which you could grant an injunction but prevent, as it were, unacceptable litigation conduct progressing much longer would be require the claimants to amend their particulars so that the Court can assess for itself exactly what the nature of the conspiracy is.

B And so you might for instance want to grant their injunction temporarily while they have time to do that, and then revisit the position once you've seen their amended particulars of claim. And if their particulars of claim are still in the state that they are today, because actually responsible counsel cannot put their names to allegations of a serious nature against any identified people, then you may at that point think well actually this injunction shouldn't continue any longer and should be discharged. And I do – that's one step that you might want to take. You might also require – give – because you're asked to give directions for the progress of the claim, you can't have a claim that just goes on forever and ever. And this claim will need to be brought to an end with a trial, or the claimants withdrawing, and no trial Judge should be confronted with pleadings in this state. So again it may be something for you to take into account on the directions, My Lady.

D So those are the submissions on conspiracy and Section 12.

E MRS JUSTICE HILL: Just before you leave that topic, does *Cuadrilla* give us any insight into the way in which that conspiracy was pleaded?

MR SIMBLET: I'm not aware that it does. I haven't got the – I haven't interrogated *Cuadrilla*.

MRS JUSTICE HILL: We only looked at it really for the purpose of the definition.

MR SIMBLET: Of what a conspiracy is.

MRS JUSTICE HILL: Yes.

F MR SIMBLET: And I don't know whether that point was taken or properly taken, if at all, in *Cuadrilla*, and we don't have I don't think have the pleadings there.

MRS JUSTICE HILL: And I think *Cuadrilla* is really about the contempt aspect of this-

G MR SIMBLET: Yes. And it's a contempt point and also bear in mind My Lady, I keep saying we are where we are, but where we also are is a year into these proceedings. There's nothing unreasonable in expecting a party that seeks discretionary remedies from the Court to have the basic components of the tort upon which it relies, before the Court in the conventional way. So unless there's anything I can help with and My Lady with at that point, then I will move onto temporal elements.

A Well we've seen this morning in the discussions between the Court and Ms Stacey, that
there has to be a temporal element. If you impose injunctions, you will need to be very alert
to the possibility, and I fear may become the probability, that the claimants have no interest
in forcing this to a final resolution. And instead come back again for further extensions.
B Because things – they say things happen. So for instance they ask for up to a year because
they say that might be the time that it takes to cover the judgment in *Barking* and its
implications. Well let's assume its implications remain the same. Let's assume the
decision in *Barking* isn't fundamentally changed. What should then happen, in – is – or
what the claimants say would then happen is they would just carry on with this claim. I've
C made my points that the claim in conspiracy cannot just carry on, it needs to be properly
pleaded. But-

MRS JUSTICE HILL: I am not sure in fairness that Ms Stacey has said that. But I mean-

MR SIMBLET: Well she's – I'm not sure she has said – sorry, I misheard what you said?

D MRS JUSTICE HILL: I am not sure she has really given any indication that these would be
unlimited. I mean-

MS STACEY: No.

MRS JUSTICE HILL: You have got a backstop of a year; you have made your position.

E MS STACEY: I specifically told you about the directions that we had in mind. I made
submissions quite to contrary.

F MR SIMBLET: If in fact the law is tweaked in some way, then the claimants will be wanting to do
something different, and as Ms Stacey said in, and this is why I say what I say, as
Ms Stacey said in the submissions she made on directions, she anticipates that say named
people might be added and come forward and want to say, want to file, defences or want to
put in evidence and so on. If that happens, then as I understood Ms Stacey to be submitting
yesterday, and with respect to her she's right on this, it's quite easy to see how these
proceedings would not be reaching a final determination within the period of a year.

G But – so when we look at what are you being asked to do, you're being asked to kick the
can down the road for about a year, but you're really being asked to – it will be – the
claimants may come knocking on the door of the court for some other reason at some later
stage. I don't think I need to persist with this any further, but it's when you are – if you are
going to impose directions or to, not impose directions, to make directions, I would invite
you to be particularly specific about the circumstances in which further orders and so on
H

A may properly be applied for, if we're going beyond the one year that's been said already.
Can I move then to some of the terms of the injunctions?

MRS JUSTICE HILL: Please do. I have got Ms Stacey's latest draft here and I have got your submissions.

B MR SIMBLET: Yes. Well, one of the first observations to make in relation to the petrol stations injunctions is there seems to be a pretty limited nexus between the conduct that is said to be the basis of the need to seek injunctive relief and to come to Court, and what actually was drawn up as being the terms of the injunction. And by that, I'm afraid I'm working from old drafts here, but I'm sure My Lady – if My Lady turns up the petrol station injunction?

C MRS JUSTICE HILL: Yes, I have that.

D MR SIMBLET: Things like blocking or impeding access to any pedestrian or vehicular access, or to a building within the Shell petrol station. In there we may be moving – there we are dealing with premises in which a. there is an implied expectation that people will be coming and going into the petrol station. And in my submission if – it's over-restrictive to say that – to use blocking or impeding. I know that they would be interpreted in a way that does not mean *de minimis* but it is, in my submission, perfectly legitimate and lawful protest for people to seek to speak to people going to buy fuel, to hand them a leaflet, to do that sort of thing, and nothing that is in the particulars of claim or the evidence produced about people
E damaging petrol pumps and so on should cause the Court to determine that a provision such as that is proportionate and a necessary response on the evidence that it has before it.

F MRS JUSTICE HILL: Just before you get to that part of your submissions in further, looking at the way you have dealt with this in writing, the – are you going to come back to the other points you have made about the terms? You have gone to 3.1 blocking or impeding access, but in your written submissions you have got your submissions about the environment point, I think you have made that. That that should not be removed.

MR SIMBLET: Yes. Well one additional – yes, thank you My Lady.

G MRS JUSTICE HILL: It just helps me to follow what you have said in writing. Is there anything else you want to say about the definition of persons unknown?

H MR SIMBLET: Yes. The – it's an unsatisfactory definition. Well, yes there is in the sense that it is drawn from – I was just getting to it from a different route. The definition is drawn from the things that are prohibited. You've got my point about how they can't drop the word environmental because if it's said to be a conspiracy, who are the conspirators? The

A absence of the case, the absence of detail in the case, militates very strongly against that being permitted. But in terms of the – if it's persons unknown damaging and/or blocking the use of and/or access to any Shell petrol station, it's the blocking, the use of or access to, because

B MRS JUSTICE HILL: Well, before you get there, I am sorry to take you – I want to try and pin this down to the structure in your skeleton.

MR SIMBLET: All right, sorry My Lady.

MRS JUSTICE HILL: So you have dealt with 101 through to three, which is the definition of persons unknown.

C MR SIMBLET: Yes, well – I've – did you receive my qualification about that?

MRS JUSTICE HILL: And I have struck through 102-

MR SIMBLET: Yes, thank you.

MRS JUSTICE HILL: Little three, is that the correct-

D MR SIMBLET: Yes, that was the, I suppose, that was the – it was partly a practicality point and also a sort of presentational point, the Judean People's Front sort of idea that we don't want to be seen as not-

MRS JUSTICE HILL: But your points around the definition of persons unknown, are 101, environmental should remain in?

E MR SIMBLET: Yes.

MRS JUSTICE HILL: 101 (i), there needs to be some kind of effect clause, and there needs to be some kind of cause clause, is that right?

F MR SIMBLET: Yes. What is the – simply blocking or impeding access to a pedestrian access does not cause damage to the claimants. It does not cause damage that is only compensatable – sorry, that is not compensatable by an award of damages which is of course one of the criteria for the grounds of an injunction. It's the – essentially their case is that people demonstrate against Shell, we don't like it, and we should get an injunction in these terms. That's the – that won't do. We're coming back I suppose to the discussions that we had yesterday about [Inaudible] and the history of the tort of conspiracy by unlawful means. It needs to say, if there is to be this provision, it needs to reflect the fact that the people that the claimants say that it will cause them – it will cause them loss.

G MRS JUSTICE HILL: So your solution is the wording you offer at footnote – at 110?

H MR SIMBLET: Well.

A MRS JUSTICE HILL: Is that right? So, just trying to look out for-

MR SIMBLET: I know what My Lady is trying to – I’m not being very helpful to My Lady here, and I’m not trying to be unhelpful. Partly my answer to this is there isn’t a solution. Because you can’t actually – that’s another reason for not granting the injunctions in the form that they seek, because they cannot come up with a form of words which reflects the underlying basis of the tort.

B MRS JUSTICE HILL: So just so I have got your objections clear, if I distil it in this way: Your objection to the persons unknown definition at 101 of your submission is that one, environmental should remain?

C MR SIMBLET: Well I suppose my objection is one, the fact that they want to move environmental shows what’s wrong with the claim, yes.

MRS JUSTICE HILL: But in terms of drafting points. Two, the definition of persons unknown that you put at 101 should somehow reflect an affect-

D MR SIMBLET: That’s it’s the causing of loss.

MRS JUSTICE HILL: And loss.

MR SIMBLET: Yes.

MRS JUSTICE HILL: So you would submit that 101 does not end with what the intention is.

MR SIMBLET: Yes.

E MRS JUSTICE HILL: And has some wording in it to reflect.

MR SIMBLET: Yes.

MRS JUSTICE HILL: What you then say, I think you add affect in to the prohibited conduct at 110?

MR SIMBLET: Yes.

F MRS JUSTICE HILL: So it would have to be with the intention, you would say, and effect of disrupting the sale, is that right?

MR SIMBLET: Yes, and by means of the acts in paragraph three over the page. So yes, I suppose the short answer to My Lady’s question is I don’t really have anything orally to add to what’s been put in writing there, but those submissions are maintained.

G MRS JUSTICE HILL: I am sorry, it is my eyes going squiffy. On 103 you have added in intention and effect of-

MR SIMBLET: Yes.

MRS JUSTICE HILL: Thereby disrupting the sale. Yes.

H

A MR SIMBLET: Yes.

MRS JUSTICE HILL: I see, so that is your one, your two amendments on the persons unknown definitions.

MR SIMBLET: Yes.

B MRS JUSTICE HILL: Then do you maintain the points at 106 and seven about the geographical issue?

MR SIMBLET: There's – yes. I mean this is the difficulty with service and eliding service with the – or the responsibilities to serve with the terms of the injunction. That it's not clear what a Shell petrol station is. You would think it would be clear because you would think it would be one with a big sign outside saying Shell. But that's not what the claimants say. The claimants say it's-

C MRS JUSTICE HILL: No, because of the shared ownership.

MR SIMBLET: They say it's any Shell petrol station with any Shell branding. So if you went into a garage shop and they were selling a Ferrari branded model which has Shell sponsorship on it, you could technically be in breach of this injunction.

D MRS JUSTICE HILL: So you say, I know I have got your higher level submissions about why this injunction should not be granted at all, but you say in relation to the location point, there needs to be some other guidance as to a. which stations are included, and b. the geographical limits of the land? Because you talk about the four – the-

E MR SIMBLET: Yes. And some of these – and some of these are places that the public have implied rights of access to.

MRS JUSTICE HILL: So you need to be clear, rather like the map that I was shown yesterday.

MR SIMBLET: Yes.

F MRS JUSTICE HILL: Of the perimeter fence if you can call it that.

MR SIMBLET: There may need to be a – I mean at the moment the claimants say it's sufficient to put a little A4 notice up in half the petrol stations, but it may be that something more detailed than that needs to be included in the – what the area is so that anybody knows where they can and cannot stand.

G MRS JUSTICE HILL: Well that is the point about service. I mean I am-

MR SIMBLET: But it's also a point about what the injunction – about what the prohibition is. Because-

H MRS JUSTICE HILL: Ms Stacey?

A MS STACEY: Sorry, just to be clear, we're not talking about where people can and can't stand.
This is not a trespass injunction.

MR SIMBLET: Well it is.

MS STACEY: It's not simply where, it's what they're doing.

B MR SIMBLET: Well blocking or impeding access to any pedestrian or vehicular entrance. So if
you stand outside a vehicular entrance.

MRS JUSTICE HILL: Sorry, Ms Stacey?

MS STACEY: It's blocking – am I looking at the right one? Yes. By express or an implied route
with others in connection with a protest with the intention of disrupting the sale or supply to
C the station. It's – all the elements string together; you can't take one off and say that's a
trespass one. If somebody was simply standing it wouldn't be sufficient, we'd have to
prove all the elements of the tort. So it's more – it's not so simple – it's not simply a case
of saying where you are, it's what you're doing there that this claimant is concerned with.

D MR SIMBLET: That's exactly-

MRS JUSTICE HILL: I see.

MR SIMBLET: That's exactly what I thought.

MRS JUSTICE HILL: Okay, what I want to do, I am conscious of time, Mr Simblet. What I want
to do is just get your shopping list of issues that you say are wrong with the drafting, if in
E fact the petrol stations order survives.

MR SIMBLET: Yes, well that's exactly what I – that's what's wrong with it. Because if in fact
you are protesting at a petrol station, are you at risk of somebody coming along and saying
you're doing what Ms Stacey just read out. When in fact where you may be may be not
even anything to do with the petrol station. In fact on the face of it, you would be outside
F the petrol station if you were impeding access to a pedestrian or vehicular entrance.

MRS JUSTICE HILL: Because you say, do you, that the extent of where access begins and ends is
unclear? Is that what you say?

MR SIMBLET: Well where access begins and ends is always going to be unclear. And also they
don't rely on trespass, so it's not just what their land is. They would say that if protestors
stood on a piece of pavement outside a petrol station through which people can drive onto
G the petrol station, and protested there, in the way that Ms Stacey just read out, I won't repeat
the words, that that was – could be a breach of this injunction. That is prohibited conduct.

H MRS JUSTICE HILL: So you say, and I am obviously going to hear from Ms Stacey on these

A points, but you say there needs to be some greater geographical limit, albeit this petrol station claim has not put in trespass, so the people understand where-

MR SIMBLET: At each and every petrol station.

MRS JUSTICE HILL: Where the limits of access are thought to be.

B MR SIMBLET: At each and every petrol station. And that's why in some of these cases there are exclusion zones and so on. They draw it in a map.

MRS JUSTICE HILL: So it is not to do with the genesis of the underlying tort not being trespass, it's to do with clarity for the people who are-

MR SIMBLET: Here we're on clarify points, yes. It's – and the underlying tort isn't in trespass so

C that's why I don't limit it, as it were, to their – to Shell's land. Ms Stacey's intervention wasn't an intervention with which I disagreed.

MRS JUSTICE HILL: All right so-

MR SIMBLET: It's about – so we're on with blocking or impeding are too uncertain. And also is

D not – there's no proper nexus with their pleaded case or the basis upon which they came before Johnson J or indeed any other Judge.

MRS JUSTICE HILL: Yes.

MR SIMBLET: I don't say that people can't be stopped from causing damage.

MRS JUSTICE HILL: Yes. So just trying to then – the third scene you elicit, 108 in your

E submissions, there needs to be some addition again around effect, is that right? That is the third point?

MR SIMBLET: Yes. And if there can't be, then that's a reason not to grant the injunction. That's what – this is where some of this goes.

MRS JUSTICE HILL: Yes, so that is to the conduct elements.

F MR SIMBLET: Yes.

MRS JUSTICE HILL: The defendant must not do any of these acts with the intention, you say, and effect.

MR SIMBLET: Yes.

G MRS JUSTICE HILL: So that is the third on your shopping list. And then your fourth? I think we then get-

MR SIMBLET: Then we are getting onto blocking and impeding, yes.

MRS JUSTICE HILL: I just wanted to make sure I understood so for Ms Stacey to have a fair

H chance to-

A MR SIMBLET: No, thank you My Lady, and I appreciate that this not straightforward and it's not been necessarily made any more straightforward by what I'm submitted about that.

MRS JUSTICE HILL: No, we are all doing the best we can. So under 3.1 you reiterate the geographical point.

B MR SIMBLET: Yes.

MRS JUSTICE HILL: And you?

MR SIMBLET: And draw attention to the fact that it's not necessarily unlawful.

MRS JUSTICE HILL: Because that is another point about geography and [inaudible]?

MR SIMBLET: Yes. And that any protest is likely – any protest outside a petrol station may well

C lead somebody to claim that their access was impeded. I mean if you try and hand somebody a leaflet and they slow down to take it, you've impeded their access. But that lawful protest cannot be prohibited by the Court.

MRS JUSTICE HILL: Just so that I am clear, sorry to row back on this, all of your submissions on the detail of the terms are on petrol stations?

D MR SIMBLET: Yes.

MRS JUSTICE HILL: Understood. Okay. So in some way your arguments of principle around Haven and Tower are much more limited?

MR SIMBLET: Yes.

E MRS JUSTICE HILL: Because-

MR SIMBLET: There are – there's one point I think I want to make about Tower.

MRS JUSTICE HILL: Okay, let us come back to that.

MR SIMBLET: We'll come back to that. Can we go through petrol stations?

MRS JUSTICE HILL: The reason I am flagging it is because I am conscious of time, but b. the

F position is, is is not Ms Stacey, that the petrol stations has slightly longer to run? That runs until the 13th I think.

MS STACEY: The caveat to that, My Lady, is something I was going to raise in reply is that these service provisions are complex and it will require time to comply with them. Because there

G are, as I understand it, 1,127 service stations, all of which all need to [inaudible].

MRS JUSTICE HILL: All right. At the moment?

MS STACEY: But it has got – we've got to 12 May.

MRS JUSTICE HILL: Which in the context of this claim is quite a bit of time compared to

H Tuesday.

A MS STACEY: But as I understand it, looking at what happened before, we'd need an order by Wednesday in order to have the 10 days to do the stuff that we need to do to comply with the [inaudible] provision.

MRS JUSTICE HILL: Okay, I did not realise that.

B MS STACEY: You've given the indication before lunch that I asked, and that's what [inaudible]

MRS JUSTICE HILL: I understand. So carry on, so Mr Simblet?

C MR SIMBLET: Yes. Blocking or impeding. I don't say there's anything about the – can't stop people from being prevented from causing damage. Same with messing about with switches and so on, nobody is going to try and say that that's conduct that somehow is lawful. I mean this is all subject of course to the point that they haven't got a case at all, but let's assume they have and we're dealing with the implications of any case that they have. The next concern we'd have is affixing or locking themselves or any object or person or any part of a Shell petrol station or any other person or object on the Shell petrol station. On the face of it, that prohibits someone from putting a leaflet on a car.

D MRS JUSTICE HILL: Yes.

MR SIMBLET: Spraying, painting, pouring, depositing or writing any substance or any part of a Shell petrol station. Chalking on the ground, prohibited by that. And those things are things that Shell have no right to require the Court to do. Those prohibitions.

E MRS JUSTICE HILL: Well unless they succeed on their arguability of a conspiracy on a third party basis.

MR SIMBLET: No, but even if they do. Even if they do, paint - drawing with chalk outside a petrol station.

MRS JUSTICE HILL: Your point is no necessarily unlawful?

F MR SIMBLET: Yes. These are not necessarily unlawful, and also bearing in mind of course that the offence of criminal damage has a defence of lawful excuse or it didn't cause damage, these are not things that necessarily cause damage. I know we're not trying to – I know we're trying to look at this in terms of the torts of trespass to good and so on rather than crimes, but it's worth bearing in mind that even the criminal law allows people to do some of these things.

G MRS JUSTICE HILL: So you point about 3.4, five and six, is really that these are not necessarily unlawful acts?

H MR SIMBLET: Yes. And therefore if they're not necessarily unlawful acts, the Court can't-

A MRS JUSTICE HILL: I am putting them all together as one.

MR SIMBLET: -Very easily prohibit them. Yes, that's – My Lady said, these are not – my submission is these are not necessarily unlawful acts. The Court therefore cannot or should not prohibit them.

B MRS JUSTICE HILL: That is your fifth point overall on [inaudible].

MR SIMBLET: Yes.

MRS JUSTICE HILL: So your sixth point is the encouragement point which you just say is too broad and vague?

MR SIMBLET: Yes, it's too vague and that's why somebody like Ms Branch experiences this, and the chilling effect of this injunction. You don't even need to go there. You can be – you can post something on the internet or, you know, it's good that people are standing – are turning up at petrol stations giving out leaflets. And that you'd be-

C MRS JUSTICE HILL: Or retweet a picture that says, 'Well done you', or something.

MR SIMBLET: Yes.

D MRS JUSTICE HILL: You say that it's outwith the geographical framework.

MR SIMBLET: Yes. It's just – basically, I'm sure My Lady has this point, Courts cannot grant injunctions that they are not prepared to enforce. And which are not sufficiently clear to be properly enforced. And the trouble with this order as drafted is some of the prohibitions are too vague and uncertain to be enforced, and some of them are in breach of the statutory right that these persons unknown have, protected by Article 10 and Article 11, to protest. And the Court can only restrain unlawful protest.

E And if I can just cloak, because I know Ms Stacey needs her time to come back, that this is a difficulty for the claimants is made clear, you may think My Lady, from the way Ms Stacey outlined her case and the evidence yesterday, where she placed reliance on the fact that there was lawful protest taking place at some of these places. The fact that the claimants have to in part ask for the Court's intervention to restrain things against the background of there being lawful protest, is a matter that should cause My Lady some considerable hesitation before granting them either the injunctions that they seek or the injunction – sorry, either the injunctions as worded, or injunctions at all.

F And finally for completeness, My Lady said did I have any submissions on Tower and Haven. I have submissions on the restrictions on Tower and Haven that – insofar as they are the same restrictions that have been placed on petrol stations. So things like the fact that

G

H

A you can't – that you might block or impede access to Tower. Or you can't stick a sticker on a – well perhaps sticking a sticker is a bad example, but you can't pin a notice up on parts of the Tower or Haven or whatever, those are all unreasonable and illegitimate restrictions on protest. But My Lady has the submissions on the limited basis upon which Ms Branch is concerned about Tower or Haven.

B MRS JUSTICE HILL: So I just need to marry up where the wording is the same.

MR SIMBLET: Yes. Or similar. Just – you have the underlying substantive point.

MRS JUSTICE HILL: But there is at least the geographical clarity around those?

C MR SIMBLET: Yes. There's a greater geographical clarity, and as Ms Stacey explained yesterday, the claim as – and has clarified before My Lady this afternoon, that claim is all in trespass and there – and it's their land, so it's much clearer. And they've got the plans. And I suppose to test this proposition, one of the difficulties with the petrol stations case is that you don't have a plan. You should have 1,000 plans of petrol stations and where it is the claimants seek to restrain protest, but you haven't got any.

D MRS JUSTICE HILL: But you would accept on those claims that the Section 12 (3) threshold, if it applies, is easier for the claimants to meet.

MR SIMBLET: In Haven and Tower?

MRS JUSTICE HILL: Yes.

E MR SIMBLET: Yes.

MRS JUSTICE HILL: So if the test is likely to succeed, you would accept because of the genesis of the underlying tort, that it's an easier task than on the petrol stations claim where the main focus of the submissions seems to be.

MR SIMBLET: Yes.

F MRS JUSTICE HILL: You may not go as far as conceding it is met.

MR SIMBLET: Yes, I'm not conceding it's met, but My Lady has the point.

MRS JUSTICE HILL: Got it. Thank you so much.

MR SIMBLET: There's nothing further to add. Thank you.

G MRS JUSTICE HILL: Ms Stacey, I have grouped together the points around terms under six headings. Do you – feel free though to make whatever submissions you wish.

H MS STACEY: My Lady, in relation to the last point, the petrol stations, their need to keep protection in place, I just ask for your note to have regard to Johnson J in paragraph 18-19 which refer to some of the risks to the petrol station which would eventuate if the

A protections was not in place. So that's just the point that I think you were just discussing with my learned friend, so-

MRS JUSTICE HILL: I am not sure I was, was I?

MR SIMBLET: No.

B MRS JUSTICE HILL: I wrongly assumed that we had a little bit more time on the petrol stations claim. I have wrongly assumed, but you are telling me that in fact-

MS STACEY: It's a general point as to the importance of maintaining cover at the petrol stations and the reference point for that is Johnson J, at 18-19. But I think I took Your Ladyship to that before lunch. So-

C MRS JUSTICE HILL: But just so that we are clear in terms of timing, on the petrol stations you are saying that although it does not run out until the week after next, you need the order by next Wednesday?

D MS STACEY: So I can give you the detail as to why that's the case. So last time around, if that's the probably the best reference point as to what the timeline should be, it's Emma Pinkerton Two, her witness statement of 10 May. I don't have the page reference immediately to hand, but I can get it. She says that on 10 May of last year, an instruction was given to put up warning notices. Sorry her witness statement is dated 10 May. She says the instruction was given on 6 May and that by 10 May they managed to get warning notices up at 58% of stations.

E The difference now is that there are multiple bank holidays between now and 12 May. If we have longer, it's page 2586, if we have longer we can obviously get more notices up. And in some – since then we've found that it's more effective to send a printed pack to the stations which means it may take longer than in 2022. So on that basis we've calculated that we need really from next Wednesday through to 12 May in order to enable us to effectively serve in relation to the stations.

F MRS JUSTICE HILL: But the same is not true of Tower and Haven?

MS STACEY: No. Tower and Haven is much more straightforward.

G MRS JUSTICE HILL: I had not appreciated that from your skeleton but thank you.

MS STACEY: No.

MRS JUSTICE HILL: Carry on?

H MS STACEY: Thank you. Just before I go to terms I just want to see if there's anything I need to pick up on. Just one point about, it may be a point in passing, but Your Ladyship thinks I

A don't need to address, but it was suggested that we had chosen not to name anyone etc. and
that it was inappropriate for us in a sense not to go to third party disclosure [inaudible], I
just ask Your Ladyship to bear in mind what Freedman J said in *TfL -v- Lee*: 'Which is
B endorsed by other Judges including Bennathan J that it is much preferable for the
information to be gathered through the police resources, and is likely to be more reliable
and accurate'. And it's that – that's the process that we followed, and it's the process that's
been followed in other protest cases throughout the history of these protests.

C So far as the complaints, if you like, or objections are made in relation to conspiracy, I think
that's the next heading, are concerned. My Lady, we don't accept that there is any
conceptual difficulty with the way in which the conspiracy claim is particularised. Plainly
in due course if any person was to be committed, or in due course if the [inaudible]
injunction is to be – well in due course if any person is to be committed, it would be for the
claimant to prove the intention to cause damage. We – this has all been gone through in
D some detail by the Judges before, and I took Your Ladyship to the attendance note. So I'm
not going to-

MRS JUSTICE HILL: The held skeletons I know deal with this.

E MS STACEY: Exactly. But the particulars of claim, the short point is that the particulars then
correspond with *Cuadrilla*, paragraph 18 which sets out the various components of the
conspiracy cause of action. And it's important to bear in mind, and sorry before I leave
that, we don't accept there's a lack of clarity or details in the particulars. Persons unknown
is the defendant, precisely on the basis that we know that some people have been smashing
up pumps but we don't know who they are, and that's the process that needs to be gone
through. But as discussed with Your Ladyship before lunch, there is jurisdiction for the
F Court to grant interim injunctions in relation to persons unknown.

The – it just so happens that on this occasion the cause of action on which the injunction is
founded is conspiracy. That might make it more problematic. It might be said, in due
course my client, because of the subjective element of intention, but that's a question of
G evidence. It doesn't – it's not fatal to the claim that's been brought. And doesn't create
certainly a conceptual problem for my clients. So that's the first point. The second point,
My Lady, is to remind ourselves of the test. What we need to establish is serious-

[Crosstalk]

H MRS JUSTICE HILL: -To be tried.

A MS STACEY: Quite. Not that these people have in fact caused the damage, but there's the serious
issue because it's a cautionary injunction we're dealing with here. Now that's subject to the
caveat of Section 12 because that raises the threshold. I accept that. And I therefore will
deal with that now. The documents that you were taken to, so the appeal documents, orders
B of Asplin LJ, we say don't take anything any further. At best, they suggest that there was a
question mark over the approach of the Court of Appeal in relation to 12 (3).

We don't, My Lady, have any underlying grounds of appeal to see how it was put and what
led to the grant of those orders. But what we do have – and we don't have any appeal
judgments bottoming out the point to assist us. But what we do have are two things. Firstly
C is that when one reads the Court of Appeal judgment in *Ineos*, there is no argument on the
face of that judgment as to whether or not Section 12 (3) did apply. There was no analysis.
It's quite clear from a reading of the judgment that parties proceeded on the assumption that
12 (3) applied. The issue is not ventilated in that judgment.

Whereas, and this is the second point, it was ventilated and considered in great detail by
D Johnson J. Including, My Lady, reference to Warby J's judgment in *Asfaw* which
Mr Simblet referred to in his submissions. And Johnson J deals with paragraph 60 of
Asfaw, we can go back to it if Your Ladyship wishes. Where effectively it's said, and I'm
paraphrasing, publication has a wide meaning. Probably the best reference is going to
E Johnson J to see what he said about that.

MRS JUSTICE HILL: Just before you leave the *Ineos* point, I am not – so all of those grants of
appeal, permission to appeal, forgive me, are to the Court of Appeal which led to the
judgments on 3 April 2019? That must be right. So all of those documents that Mr Simblet
[inaudible] arrived and dated at some point in 2018, and they are what led to the substantive
F judgment of 2019? And your point is-

MS STACEY: No argument.

MRS JUSTICE HILL: So whatever happened between the grant of permission to appeal,
ultimately the appeal judgment is what helps me.

G MS STACEY: Indeed.

MRS JUSTICE HILL: Thank you.

MS STACEY: Sorry, I-

MRS JUSTICE HILL: No, I was trying to think-

MS STACEY: No, I was-

H

A MRS JUSTICE HILL: Sorry if it was a basic point.

MS STACEY: No.

MRS JUSTICE HILL: Johnson J, got it.

B MS STACEY: Johnson J at 69. You'll see in the last line where he says Section 12 (3) should be applied accordingly so that publication covers any form of communication. That's a reference to *Afsaw* which is the paragraph – one of the paragraphs that Mr Simblet refers to.

C So that's fine, so it was considered by Johnson J. And then he goes on to consider in paragraph 70 and 71, why Section 12 (3) nevertheless doesn't apply to protest cases. And My Lady it's important to bear in mind that on the facts of *Afsaw*, people were distributing leaflets, and that's apparent from paragraph 31.

D No evidence here of any equivalent type of activity, and if you look at the order, My Lady, which is the hook if you like for the submission that publication might apply, the words are spraying, painting, pouring, depositing or writing in any substance on any part of the Shell petrol stations. That is not, in my submission, anywhere near close to the facts of *Afsaw*, so these cases are all fact specific on the particular facts before Johnson J who was perfectly right to find that Section 12 (3) had no application.

MRS JUSTICE HILL: Thank you.

MS STACEY: So far as duration is concerned, My Lady as I think I've said a number of times-

E MRS JUSTICE HILL: I have your points about the timing if it helps you. I do not need you to trouble me further about that.

MS STACEY: I'm grateful. As far as the definition of persons unknown is concerned, I think you also have our points in relation to that, but please let me know if you need particular assistance.

F MRS JUSTICE HILL: Well I understand why the environmental part wants to be removed. What do you say about the proposal to add affect?

MS STACEY: Yes, well we say that it's not appropriate in circumstances where we're seeking an anticipatory injunction against persons unknown. And one needs to bear in mind what's the purpose of the description of persons unknown? You see that from *Canada Goose* in 80.2.2. The requirements, just pull that up... the small bundle, 82.2, page 37 of the authorities bundle.

G MRS JUSTICE HILL: What does that say?

H MS STACEY: It says the persons unknown must be defined in the originating process by reference

A to their conduct which is alleged to be unlawful. So that's just what needs to be done. And
the purpose of that is so that you can identify the persons who in due course might be
B joined. Now the element of actual damage is something that – it's loss essentially. So it
would have to be proven by my client in due course if we were to enforce. Because a
person could turn around and say well actually you've suffered no actual damage and
therefore there's no complete cause of action against me. But it's not an element that would
be necessary or appropriate to include in the description. Because it introduces unnecessary
complexity.

MRS JUSTICE HILL: Is that not one of the *Cuadrilla* elements? Have I misremembered that?

C MS STACEY: It's one of the *Cuadrilla* elements of the cause of action.

MRS JUSTICE HILL: Yes.

MS STACEY: But it doesn't say – the point here is by reference to their conduct. The conduct is
what needs to be identified. So the acts, the unlawful acts, not the effect. So if you look at
D *Canada Goose*, paragraph 82.2, they must be defined by reference to the actions which are
unlawful, the offending acts. Now what the effect of those acts are - is arising at a different
stage. And you might get assistance by two further cases. *Breen*. Actually before we do
that, let's turn up *Bastin* which is earlier on in the authorities bundle. Behind tab eight.
Sorry, of the small authorities bundle. *Bastin* is at page three. Paragraph 22 which is at
E page eight.

MRS JUSTICE HILL: You can just tell me what it says.

MS STACEY: It says, so I'm looking actually at paragraph 22.2.1, where reference is made to
Bloomsbury and the Vice Chancellor in Bloomsbury states as follows: 'The crucial point as
F it seems to me, is that the description used must be sufficiently certain as to identify both
those who are included and those who are not. If that test is satisfied, it does not seem to
me to matter that the description may apply to no one or to more than one person, nor that
there is no further element of subsequence identification, whether by service or otherwise'.
So My Lady, the call from Cameron which was the Supreme Court Judge and [inaudible]
G heading up this jurisdiction if I can put it that way. The purpose of the description needing
to be so specific was for the purposes of identification. So as to allow service. And I
suggest that the description that we have is perfectly proper and appropriate in light of that
underlying policy.

H MRS JUSTICE HILL: Thank you.

A MS STACEY: I'm just going to have a quick look at *Breen* to see if that's helpful, takes the point any further. Yes, and that also reflects paragraph 31 of *Breen*, page 463. It's slightly off the point but I'll ask Your Ladyship to look at it anyway.

MRS JUSTICE HILL: Yes.

B MS STACEY: 463, paragraph 31, you'll see there there's reference to the injunction. So this wasn't so much the description but it's said that the injunction was expressly made subject to the condition, those actions had to be carried out in agreement with the intention of preventing or impeding. There's no reference there to actual harm. But that's the reference to the injunction, but nevertheless, even less requirement in relation to the description which
C is all to do with description which is all to do with identification and service. And how can you prove actual harm in the context of an anticipatory injunction against persons unknown? It introduces an investigative process that is simply outwith the requirement. So that's the effect point.

MRS JUSTICE HILL: The next one was geography around the petrol stations.

D MS STACEY: Yes. Geography around petrol stations. Well My Lady one has to look at this in context. Dealt with by Johnson J is the starting point and you will recall from the attendance note that there's a long and detailed exchange between him and Mr Watkin as to what the appropriate geographical limits of this injunction should be. The target, the overall
E target, is Shell. The petrol stations change. And that's a point that was recognised by Johnson J; it's not set in stone because it's a branded station and that changes from time to time. So that's the starting point.

The second point is contextually what is sought to be prohibited in relation to Shell petrol stations. Not simply walking on them. So in that scenario it's not as important, one might
F say, to define the geographical limits by reference to boundaries. Because crossing a boundary isn't enough. You are prohibited from doing the activities which offend the various component parts in paragraph 18 of *Cuadrilla*. You don't get to the range of breach unless all those component parts have been satisfied, if you like.

G And in that context, Johnson J was satisfied that Shell petrol station branded, you know it when you see it. You have to take a step back and apply the man on the Clapham omnibus test, if I can put it that way. What would a reasonable bystander understand? And is it sufficiently clear in all the circumstances? And the answer to that question My Lady, is yes. The other point My Lady that I would throw into the mix is there was no freedom of forum.

H

A Whilst Ms Branch might want to stand on the forecourt handing out leaflets, or stand at the entrance and be concerned, she has no – there is, as *Cuadrilla* makes clear, no rights – there no – act of protest for the purposes of disturbing or disrupting, or which would cause blockages is not at the core of Articles 10 and 11. She can protest elsewhere which doesn't carry the risk that she is so concerned about.

B And I'm told, given that there are currently as I stand her, 1,127 stations which all change from time to time, it's simply not possible for maps to be produced, or plans in the usual way. But there is no geographical lack of clarity because the location which forms the subject of the overarching cause of action in respect of which the unlawful activities would need to be proved, is clear enough by reference to its definition. And that's the approach adopted ultimately by Johnson J. And I turn up the paragraph and show you what he says.

C MRS JUSTICE HILL: I can read that in my own time.

MS STACEY: Yes. Defined by reference to the class, the thing, as opposed to a plan.

D MRS JUSTICE HILL: Both the activities and the fact that it is Shell-related.

MS STACEY: Exactly.

MRS JUSTICE HILL: Yes.

MS STACEY: And so-

E MRS JUSTICE HILL: The third point that Mr Simblet made was around effect, I think you have dealt with that.

MS STACEY: I have dealt with that. I think then I'm at 3.4 and 3.6 of his skeleton.

MRS JUSTICE HILL: Then you are on blocking and impeding access I think.

MS STACEY: That's geographical scope.

MRS JUSTICE HILL: Which you have dealt with.

F MS STACEY: Which I've dealt with, and no freedom of forum again.

MRS JUSTICE HILL: So then the affixing, erecting, painting. All unlawful.

MS STACEY: Yes, well My Lady.

MRS JUSTICE HILL: All not necessarily unlawful.

G MS STACEY: Back to two points in relation to that. Back to no freedom of forum. You don't have to do it there. You don't have to affix anything on land that's not yours. It's private property. That's the first point. The second point My Lady, is *Cuadrilla* makes clear that an injunction or prohibition can include conduct that would not otherwise be unlawful. Can include, in other words, lawful activity if it's necessary. For the purposes of the cause of

H

A action. So it's not in itself necessarily objectionable that an injunction order is framed in terms that might conceivably catch activity that would be lawful. And you have the recital here.

MRS JUSTICE HILL: I am sorry?

B MS STACEY: And you have the recital that the intention isn't – so if somebody does something, hands out a leaflet, you know in practical – the practical reality is they aren't going to be enforced against, they're not a person unknown. We'd look at the evidence, back to Freedman J's approach to consideration before you join. You have to look at whether the evidence justifies it. I'm taking this at quite a lick.

C MRS JUSTICE HILL: No, I am also conscious of time. Have you dealt with the persons unknown and paragraphs one and three. You have dealt with geography, that's two and four and you have dealt with not necessarily unlawful, that is five. And then six was encouragement.

MS STACEY: And the point on encouragement that it was subjective?

D MRS JUSTICE HILL: No. That again too vague, uncertain. You would say I assume in response to that is it the same point around not necessarily unlawful?

E MS STACEY: Exactly. Not necessarily unlawful. And also again back to *Cuadrilla* which talks about the types of lack of clarity. And there can be – well it's not necessarily unlawful and one can form a view about it. It's not unclear, one knows, in the context of these types of protests, what we're trying to get at. That if you're acting in combination with others then encouragement – yes, and we're dealing with coordinated, well-organised groups, working together. So you know it again when you see it.

MRS JUSTICE HILL: That is very helpful, Ms Stacey. Is there anything else you want to say?

MS STACEY: Can I just turn my back?

F MRS JUSTICE HILL: Please do.

MS STACEY: My Lady, you haven't forgotten about the third party disclosure have you? Because I dealt with that on day one.

MRS JUSTICE HILL: Absolutely not.

G MS STACEY: It feels like a long time ago.

MRS JUSTICE HILL: I have today. We have not had any submissions; I do not think we need to revisit it. I absolutely have not.

H MS STACEY: And so far as process is concerned, it may be the appropriate time to – I had a very brief chat with Mr Simblet and I don't think Mr Simblet's in disagreement, he'll pop up if

A he is, but our preference would be for an indication to be given, a decision to be made
rather, on – as soon as possible. Or an order to be and therefore we'd need Your Ladyship's
assistance in terms of seeing an order. Which would be produced on the back of that
decision ideally by Friday. But obviously I'm in Your Ladyship's hands. Thereafter, we do
B wish to have a more detailed judgment because we think it would assist both us and other
parties, given the-

MRS JUSTICE HILL: No, that is certainly my intention. It is just the logistics of doing so.

MS STACEY: Well, that can follow. But priority here would be to get the decision once Your
Ladyship's considered everything And we can make ourselves available on Friday to make
C sure that's turned around.

MRS JUSTICE HILL: I think that would be helpful. All right, well-

MR SIMBLET: Can I pop up in relation to Friday? I actually have a conference with a retained
client on Friday so it's quite – Friday morning would be difficult for me to be – but
D Ms Hardy is able to deal with any corrections and so on if it's simply a question of – it
sounds like it's not going to be a judgment, it's looking at the order. I won't be able to look
at it myself on Friday morning. If it was another time, then-

MRS JUSTICE HILL: I think in terms of absolute priority, I have to get something to you that
decides the Tower and Haven issues by the end of Friday. At the latest.

E MS STACEY: Yes.

MRS JUSTICE HILL: Not – petrol stations I know we might have until next week. That is quite a
long time in the scope of this case. But what you need from me is a decision about whether
to grant or renew the injunction on Tower and Haven. And in order to achieve that, we
need a recital that reflects how I have dealt with Mr Simblet's client.

F MS STACEY: Indeed.

MRS JUSTICE HILL: I think. Because it needs to reflect-

MS STACEY: It's the 40.9 point that needs to be referenced.

MRS JUSTICE HILL: It needs to reflect the extent to which I have allowed him in or now allowed
G him in or listened to or taken into account of all his submissions. So those issues, it seems
to me, are the priority.

MS STACEY: I agree.

MR SIMBLET: I rise I hope to be helpful. On the if it is – now that we're aware of these
difficulties in relation to the petrol stations and so on, if My Lady finds herself in a position
H

A that you haven't reached all of your decisions and you'd like to and you're conscious of the
fact that there is a practical problem for the claimants that would – that could be solved by
extending the injunction for a couple of days, or whatever, if that's what you need to do,
then – well obviously I don't speak for everyone in the world, I only speak for Ms Branch,
B and everyone in the world is affected, but we can understand how the Court might want to
case manage that and wouldn't seek to make-

MRS JUSTICE HILL: I think that is sensible.

MR SIMBLET: We wouldn't seek to make your life more difficult.

MRS JUSTICE HILL: Well I would quite like to be able to assist your client as much as I can.

C But I think that is a helpful-

MRS JUSTICE HILL: That's happened before, a short continuation. For a matter of days or a
short period of time, a week.

MS STACEY: Oh yes. Sorry, I need to work out how that interrelates with our service
obligations. Because we have to serve any order, so any short continuation has to be served
D against – there's two rounds.

MR SIMBLET: That's not helpful.

MS STACEY: No. It's fine for Tower and Haven but that's not the problem. Or it might be.
Tower and Haven it wouldn't be so-

E MRS JUSTICE HILL: Well it might – yes. Let me reflect. I mean there is more between you on
the petrol stations as far as I can see.

MS STACEY: Yes, a short continuation in relation to that would involve another round of quite
extensive service, activity on our part. Because we have to serve that – the risk being,
My Ladyship to put it in practical terms, if we didn't serve that short continuation order,
F however long it lasts for, effectively there – people could have a free pass in the period
between – because they wouldn't have been served with that order.

MR SIMBLET: Well again to help, of course you could dispense with the reservice requirements
for that part of it. I see the point that Ms Stacey raises, she doesn't want to do it twice.

G MRS JUSTICE HILL: Well is the position then in reality are you saying that you – well it might
have to be what we can do.

MS STACEY: Well quite, but I just want to flag it's not as straightforward.

MRS JUSTICE HILL: Because there are so many petrol stations.

MS STACEY: So many petrol stations, dispensing of service in the context of persons unknown.

H

A MRS JUSTICE HILL: Not attractive.

MS STACEY: Not necessarily something we can do without thinking about it quite carefully.

MRS JUSTICE HILL: Yes.

B MS STACEY: So I don't want to create roadblocks in my – because I would like a short continuation to give Your Ladyship as much time as possible, but that's something that I thought it proper to bring to your attention.

MRS JUSTICE HILL: All right. Leave it with me and I will do the best I can and you will hear from my clerk in some form. You will hear something by noon on Friday. I cannot promise what it will be but I am very conscious of the timing. But across all of the C injunctions. And if I can make an in principle decision even around the petrol stations, even for a short period of time, I might be able to wrap that up by Friday morning as well. – Friday lunchtime as well.

MS STACEY: I'm grateful.

D MRS JUSTICE HILL: So I will do the best I can.

MS STACEY: Thank you.

MRS JUSTICE HILL: You will hear from my clerk in some form. So please, I am assuming Mr Simblet then my clerk has Ms Hardy's email address. And we will – yes, she has been party to some of these round [inaudible], so yes.

E MRS JUSTICE HILL: So even though perhaps she is not formally on the record, she is content to hold the brief while you are in prison for saying-

MR SIMBLET: She will be.

MRS JUSTICE HILL: On a serious – I mean I want to make sure that things are properly covered and I think your junior is-

F MR SIMBLET: Yes, Mr Greenhall may be available by then. I am not sure. He is doing a trial somewhere.

MRS JUSTICE HILL: Does my clerk have his details? Can you make sure she does. And I think certainly on your team's side we have plenty of contact details and you are aware of my clerk's information. All right, thank you very much both of you.

G **Court rises.**

H

A

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

B

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

C

D

E

F

G

H

Amended under Slip Rule CPR r40.12

Claim No: QB-2022-001241

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Before: Mrs Justice Hill DBE

On: 23 May 2023

BETWEEN:

SHELL U.K. LIMITED

- and -



**PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE KNOWN AS
SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED IN THE PARTICULARS OF
CLAIM) WITHOUT THE CONSENT OF THE CLAIMANT, OR BLOCKING THE ENTRANCES TO
THAT SITE**

Defendant

ORDER

PENAL NOTICE

**IF YOU, THE DEFENDANTS, DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF
COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

IMPORTANT NOTICE TO DEFENDANTS

**This Order prohibits you from doing the acts set out in this Order. You should read it
very carefully. You are advised to consult a solicitor as soon as possible.**

**Any other person who knows of this Order and does anything which helps or permits the
Defendants to breach the terms of this order may also be held to be in contempt of
Court and may be imprisoned, fined, or have their assets seized.**

**A Defendant who is an individual who is ordered not to do something must not do it
himself or in any other way. He must not do it through others acting on his behalf or on
his instructions or with his encouragement.**

You have the right to ask the Court to vary or discharge this Order (which is explained below).

RECITALS

UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Centre Tower Proceedings

AND UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Haven Proceedings (“**the 2022 Shell Haven Injunction Order**”)

AND UPON a review of the order of Johnson J dated 17 May 2022 (as amended on 20 May 2022) in respect of the Shell Petrol Stations Proceedings

AND UPON hearing Myriam Stacey KC and Joel Semakula for the Claimant and no other person appearing

AND UPON hearing Stephen Simblet KC for Ms Branch and no other person appearing

AND UPON READING the documents set out in the First Schedule to this Order

AND UPON the Claimant indicating that it will provide to any Defendant copies of further evidence or other documents filed in these proceedings upon request from time-to-time at an email address provided to the Claimant

AND UPON the Claimant giving and the Court accepting the undertakings set out in Second Schedule to this Order

AND UPON the Court being satisfied having reviewed the 2022 Shell Haven Injunction Order that it should be continued, for the reasons given in the judgment handed down on 23 May 2023 with neutral citation number [2023] EWHC 1229 (KB)

AND UPON the Claimant confirming that this Order is not intended to prohibit any lawful protest outside Shell Haven in so far as any such protest does not obstruct any of the pedestrian and vehicular entrances or exists to Shell Haven

IT IS ORDERED:

DEFINITIONS

1. In this Order, “**Shell Haven**” means the parts of the Claimant’s land known as Shell Haven, Stanford-Le-Hope, Essex which are enclosed or bounded by fences, gates, gateways and parts of the River Thames. The general location of the said boundaries are shown in red and/or blue on the plan attached to this Order at Appendix 1 and marked “Plan of Shell Haven Site”

INJUNCTION

2. This Order shall continue to operate until trial or further order or with a backstop of 23:59 on 12 May 2024 ("the backstop date"), unless varied, discharged or extended by further order, whichever is sooner.
3. The Defendants and each of them must not do any of the acts listed in paragraphs 4 and 5 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.
4. The acts referred to in paragraph 3 of this Order are:
 - a. entering or remaining upon any part of Shell Haven without the consent of the Claimant;
 - b. blocking access to any of the gateways to Shell Haven the locations of which are identified marked blue on "Plan 1" and "Plan 2" which are appended to this Order;
 - c. causing damage to any part of Shell Haven whether by:
 - i. affixing themselves, or any object, or thing, to any part of Shell Haven, or to any other person or object or thing on or at Shell Haven;
 - ii. erecting any structure in, on or against Shell Haven;
 - iii. spraying, painting, pouring, sticking or writing with any substance on or inside any part of Shell Haven; or
 - iv. otherwise.
5. A Defendant who is ordered not to do something must not do it himself/herself/themselves or in any other way. He/she/they must not do it by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

THE REVIEW

6. If and to the extent any of the Shell Orders granted on 23 May 2023 in respect of claim numbers QB-2022-001420 (Shell Petrol Stations Proceedings), QB-2022-001259 (Shell Centre Tower Proceedings) and QB-2022-001241 (Shell Haven Proceedings) remain in place on the backstop date, those Orders shall again be reviewed at a hearing to be fixed to take place in April 2024 with a time estimate of 1.5 days. For that purpose the Claimant's solicitors shall by 4pm on 28 February 2024 apply (using one application notice) to the King's Bench Judges' Listings Office for the matter in respect of all three orders to be listed and shall provide for notice of the listing and the date as listed to be served by uploading a notice of the hearing to <http://www.noticespublic.com/> by 4pm no later than 10 days before the hearing date.

SERVICE

7. Pursuant to CPR r.6.15 and r.6.27 and rr.81.4(c) and (d), service of this Order shall be validly effected by:
 - a. replacing each of the warning notices which are currently affixed at the entrances and around the perimeter of Shell Haven so as to include the information at paragraph 8 below;
 - b. procuring that a notice containing the information indicated at paragraph 8 below is:
 - i. uploaded to <http://www.noticespublic.com/>;
 - ii. sent to the email addresses set out in the Third Schedule of this Order.
8. The notices shall (i) warn of the existence and general nature of the relevant Order, and of the consequences of breaching it; state that (ii) the relevant Order was reviewed at a hearing held on 25-6 April 2023; (iii) the relevant Order continues; (iv) the relevant Order is to be reviewed again at a hearing to be listed in April 2024; (v) any person affected by the Order may apply for it to be varied or discharged (vi) the Claimant's solicitors can be contacted for details as to the time and date of that hearing; and (vii) a copy of this order may be obtained from <http://www.noticespublic.com/>.
9. Uploading a copy of this Order to <http://www.noticespublic.com/combined> with the taking of such steps as are set out in paragraphs 7 and 8 above shall be good and sufficient service of this Order upon the Defendant.
10. Pursuant to CPR 6.15(4)(b) and 6.27, this Order shall be deemed to be served on the latest date on which all the methods of service referred to in paragraphs 7, 8 and 9 have been completed in respect of this Order, such date to be verified by the completion of a certificate of service or witness statement.
11. The Court will provide sealed copies of this Order to the Claimant's solicitors for service (whose details are set out below).

FURTHER DIRECTIONS

12. As a result of the connected parties and activities caught by the terms of this Order the Court considers it appropriate for these proceedings to be managed together with claim numbers QB-2022-001259 and QB-2022-001420 (but not for those claims to be consolidated) for the time being subject to any further order or direction by the Court of its own motion or following an application by either party for the claim to be heard or considered separately.
13. Any person affected by this Order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimant's solicitors by email to the address specified below 48 hours before making such application of the nature of such application and the basis for it.

14. The Claimant has liberty to apply for further directions to progress the matter to trial or to vary or discharge this Order.

COSTS

15. Costs reserved.

COMMUNICATION WITH THE CLAIMANT

16. The Claimant's solicitors and their contact details are amended to the following:

Eversheds Sutherland (International) LLP

Bridgewater Place, Water Lane Leeds LS11 5DR

(Reference OLDFIEA/SHELL)

shell.service@eversheds-sutherland.com

Dated 23 May 2023

First Schedule

(Documents read by the court in considering the making of this Order)

In the course of considering making of this Order, the Court read the following documents:

1. Application notice dated 30 March 2023
2. Witness Statement of Christopher Prichard-Gamble dated 30 March 2023
3. Exhibit CPG1
4. Witness Statement of Keith Garwood dated 30 March 2023
5. Exhibit KG3
6. Witness Statement of Fay Lashbrook dated 30 March 2023
7. Exhibit FL1
8. Witness Statement of Benjamin Austin dated 30 March 2023
9. Exhibit BA3
10. Witness Statement of Alison Judith Oldfield dated 29 March 2023
11. Exhibit AJ01
12. Second Witness Statement of Alison Judith Oldfield dated 19 April 2023
13. Exhibit AJ02
14. First Witness Statement of Jessica Branch dated 24 April 2023
15. Second Witness Statement of Jessica Branch dated 26 April 2023
16. Witness Statement of Nancy Friel dated 26 April 2023

Second Schedule

The Claimant gave the following undertakings to the Court:

1. To identify and name defendants and apply to add them as named defendants to this Order as soon as reasonably practicable.
2. To pay any damages which the Defendants (or any other party served with or notified of this Order) shall sustain as a result of the making of this Order, and which the Court considers ought to be paid.

Third Schedule
(list of email addresses)

1. **EXTINCTION REBELLION UK**
- 1.1 enquiries@extinctionrebellion.uk
- 1.2 press@extinctionrebellion.uk
- 1.3 xrvideo@protonmail.com
- 1.4 xr-action@protonmail.com
- 1.5 xraffinitysupport@protonmail.com
- 1.6 xr-arrestwelfare@protonmail.com
- 1.7 artsxr@gmail.com
- 1.8 xr-CitizensAssembly@protonmail.com
- 1.9 xr.connectingcommunities@gmail.com
- 1.10 xrdemocracy@protonmail.com
- 1.11 xrnotables@gmail.com
- 1.12 integration@rebellion.earth
- 1.13 xr-legal@riseup.net
- 1.14 press@extinctionrebellion.uk
- 1.15 xr-newsletter@protonmail.com
- 1.16 xr-peoplesassembly@protonmail.com
- 1.17 xrpoliceliaison@protonmail.com
- 1.18 rebelringers@rebellion.earth
- 1.19 xr.regenerativeculture@gmail.com
- 1.20 xr-regionaldevelopment@protonmail.com
- 1.21 RelationshipsXRUK@protonmail.com
- 1.22 xr.mandates@gmail.com
- 1.23 socialmedia@extinctionrebellion.uk
- 1.24 xrsocialmediaevents@gmail.com
- 1.25 eventsxr@gmail.com
- 1.26 xrbristol.regional@protonmail.com
- 1.27 xrcymru@protonmail.com
- 1.28 xr.eastengland@protonmail.com

- 1.29 xrlondoncoord@gmail.com
- 1.30 XRMidlands@protonmail.com
- 1.31 xrne@protonmail.com
- 1.32 support@xrnorth.org
- 1.33 xrni@rebellion.earth
- 1.34 xrscotland@gmail.com
- 1.35 XR-SouthEastRegionalTeam@protonmail.com
- 1.36 xr.regional.sw@protonmail.com
- 1.37 talksandtraining.xrbristol@protonmail.com
- 1.38 xrcymrutalksandtraining@gmail.com
- 1.39 eoexrtnt@protonmail.com
- 1.40 xrlondoncommunityevents@gmail.com
- 1.41 xrmidlandstraining@protonmail.com
- 1.42 XRNE.training@protonmail.com
- 1.43 xrnw.training@gmail.com
- 1.44 xryorkshire.training@gmail.com
- 1.45 xrni.tt@rebellion.earth
- 1.46 talksandtrainings.scotland@extinctionrebellion.uk
- 1.47 xrttse@gmail.com
- 1.48 xrsw.trainings@gmail.com
- 2. **JUST STOP OIL**
- 2.1 Ring2021@protonmail.com
- 2.2 juststopoil@protonmail.com
- 2.3 youthclimateswarm@protonmail.com
- 3. **YOUTH CLIMATE SWARM**
- 3.1 youthclimateswarm@protonmail.com

Plan of Shell Haven
(Plan 1)





Amended under Slip Rule CPR r40.12

Claim No: QB-2022-001259

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Before: Mrs Justice Hill DBE

On: 23 May 2023

BETWEEN:

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED 23 May 2023

- and -

**(1) PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING KNOWN
AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL CENTRE TOWER")
WITHOUT THE CONSENT OF THE CLAIMANT, OR DAMAGING THE BUILDING OR
DAMAGING OR BLOCKING THE ENTRANCES TO THE SAID BUILDING**

Defendants



ORDER

PENAL NOTICE

**IF YOU, THE DEFENDANTS, DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF
COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

IMPORTANT NOTICE TO DEFENDANTS

**This Order prohibits you from doing the acts set out in this Order. You should read it
very carefully. You are advised to consult a solicitor as soon as possible.**

**Any other person who knows of this Order and does anything which helps or permits the
Defendants to breach the terms of this order may also be held to be in contempt of
Court and may be imprisoned, fined, or have their assets seized.**

**A Defendant who is an individual who is ordered not to do something must not do it
himself or in any other way. He must not do it through others acting on his behalf or on
his instructions or with his encouragement.**

You have the right to ask the Court to vary or discharge this Order (which is explained below).

RECITALS

UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Centre Tower Proceedings (**"the 2022 Shell Centre Tower Injunction Order"**)

AND UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Haven Proceedings

AND UPON a review of the order of Johnson J dated 17 May 2022 (as amended on 20 May 2022) in respect of the Shell Petrol Stations Proceedings

AND UPON hearing Myriam Stacey KC and Joel Semakula for the Claimant and no other person appearing

AND UPON hearing Stephen Simblet KC for Ms Branch and no other person appearing

AND UPON READING the documents set out in the First Schedule to this Order

AND UPON the Claimant indicating that it will provide to any Defendant copies of further evidence or other documents filed in these proceedings upon request from time-to-time at an email address provided to the Claimant

AND UPON the Claimant giving and the Court accepting the undertaking set out in Second Schedule to this Order

AND UPON the Court being satisfied having reviewed the Shell Centre Tower Injunction Order that it should be continued, for the reasons given in the judgment handed down on 23 May 2023 with neutral citation number [2023] EWHC 1229 (KB)

AND UPON the Claimant confirming that this Order is not intended to prohibit any lawful protest outside of Shell Centre Tower in so far as any such protest does not obstruct any of the pedestrian and vehicular entrances or exits to Shell Centre Tower

IT IS ORDERED:

DEFINITIONS

1. In this Order, **"Shell Centre Tower"** means the building outlined in red and/or blue on the plan which is attached to this Order (but including any canopy) marked "BUILDING PLAN" known as and situated at Shell Centre Tower, Shell Centre, Belvedere Road, London.

INJUNCTION

2. This Order shall continue to operate until trial or further order or with a backstop of 23:59 on 12 May 2024 (“the backstop date”), unless varied, discharged or extended by further order, whichever is sooner.
3. The Defendants and each of them must not do any of the acts listed in paragraphs 4 and 5 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.
4. The acts referred to in paragraph 3 of this Order are:
 - a. entering or remaining upon any part of the Shell Centre Tower without the consent of the Claimant;
 - b. blocking access to any of the doors which provide access and egress to and from the Shell Centre Tower;
 - c. causing damage to any part of the Shell Centre Tower whether by:
 - i. affixing themselves, or any object, or thing, to any part of the Shell Centre Tower, or to any other person or object or thing on or in Shell Centre Tower;
 - ii. erecting any structure in, on or against Shell Centre Tower;
 - d. spraying, painting, pouring, sticking or writing with any substance on or inside any part of Shell Centre Tower; or
 - e. otherwise.
5. A Defendant who is ordered not to do something must not do it himself/herself/themselves or in any other way. He/she/they must not do it by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

THE REVIEW

6. If and to the extent any of the Shell Orders granted on 23 May 2023 in respect of claim numbers QB-2022-001420 (Shell Petrol Stations Proceedings), QB-2022-001259 (Shell Centre Tower Proceedings) and QB-2022-001241 (Shell Haven Proceedings) remain in place on the backstop date, those Orders shall again be reviewed at a hearing to be fixed to take place in April 2024 with a time estimate of 1.5 days. For that purpose the Claimant’s solicitors shall by 4pm on 28 February 2024 apply (using one application notice) to the King’s Bench Judges’ Listings Office for the matter in respect of all three orders to be listed and shall provide for notice of the listing and the date as listed to be served by uploading a notice of the hearing to <http://www.noticespublic.com/> by 4pm no later than 10 days before the hearing date.

SERVICE

7. Pursuant to CPR r.6.15 and r.6.27 and rr.81.4(c) and (d), service of this Order shall be validly effected by:
 - a. replacing each of the warning notices which are currently affixed at the entrances and around the perimeter of Shell Centre Tower, so as to include the information at paragraph 8 below;
 - b. procuring that a notice containing the information indicated at paragraph 8 below is:
 - i. uploaded to <http://www.noticespublic.com/>;
 - ii. sent to the email addresses set out in the Third Schedule of this Order;
 - iii. sent to any person who has previously requested a copy of documents in these proceedings from the Claimant or its solicitors, either by post or email (as was requested by that person).
8. The notices shall (i) warn of the existence and general nature of the relevant Order, and of the consequences of breaching it; state that (ii) the relevant Order was reviewed at a hearing held on 25-6 April 2023; (iii) the relevant Order continues; (iv) the relevant Order is to be reviewed again at a hearing to be listed in April 2024; (v) any person affected by the Order may apply for it to be varied or discharged (vi) the Claimant's solicitors can be contacted for details as to the time and date of that hearing; and (vii) a copy of this order may be obtained from <http://www.noticespublic.com/>.
9. Uploading a copy of this Order to <http://www.noticespublic.com/> combined with the taking of such steps as are set out in paragraphs 7 and 8 above shall be good and sufficient service of this Order upon the Defendants.
10. Pursuant to CPR 6.15(4)(b) and 6.27, this Order shall be deemed to be served on the latest date on which all the methods of service referred to in paragraphs 7, 8 and 9 have been completed in respect of this Order, such date to be verified by the completion of a certificate of service or witness statement.
11. The Court will provide sealed copies of this Order to the Claimant's solicitors for service (whose details are set out below).

FURTHER DIRECTIONS

12. As a result of the connected parties and activities caught by the terms of this Order the Court considers it appropriate for these proceedings to be managed together with claim numbers QB-2022-001241 and QB-2022-001420 (but not for those claims to be consolidated) for the

time being subject to any further order or direction by the Court of its own motion or following an application by either party for the claim to be heard or considered separately.

13. Any person affected by this Order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimant's solicitors by email to the address specified below 48 hours before making such application of the nature of such application and the basis for it.

14. The Claimant has liberty to apply for further directions to progress the matter to trial or to vary or discharge this Order.

COSTS

15. Costs reserved.

COMMUNICATION WITH THE CLAIMANT

16. The Claimant's solicitors and their contact details are amended to the following:

Eversheds Sutherland (International) LLP

Bridgewater Place, Water Lane Leeds LS11 5DR

(Reference OLDFIEA/SHELL)

shell.service@eversheds-sutherland.com

Dated 23 May 2023

First Schedule

(Documents read by the court in considering the making of this Order)

In the course of considering making of this Order, the Court read the following documents:

1. Application notice dated 30 March 2023
2. Witness Statement of Christopher Prichard-Gamble dated 30 March 2023
3. Exhibit CPG1
4. Witness Statement of Keith Garwood dated 30 March 2023
5. Exhibit KG3
6. Witness Statement of Fay Lashbrook dated 30 March 2023
7. Exhibit FL1
8. Witness Statement of Benjamin Austin dated 30 March 2023
9. Exhibit BA3
10. Witness Statement of Alison Judith Oldfield dated 29 March 2023
11. Exhibit AJ01
12. Second Witness Statement of Alison Judith Oldfield dated 19 April 2023
13. Exhibit AJ02
14. First Witness Statement of Jessica Branch dated 24 April 2023
15. Second Witness Statement of Jessica Branch dated 26 April 2023
16. Witness Statement of Nancy Friel dated 26 April 2023

Second Schedule

The Claimant gave the following undertakings to the Court:

1. To identify and name defendants and apply to add them as named defendants to this Order as soon as reasonably practicable.
2. To pay any damages which the Defendants (or any other party served with or notified of this Order) shall sustain as a result of the making of this Order, and which the Court considers ought to be paid.

Third Schedule

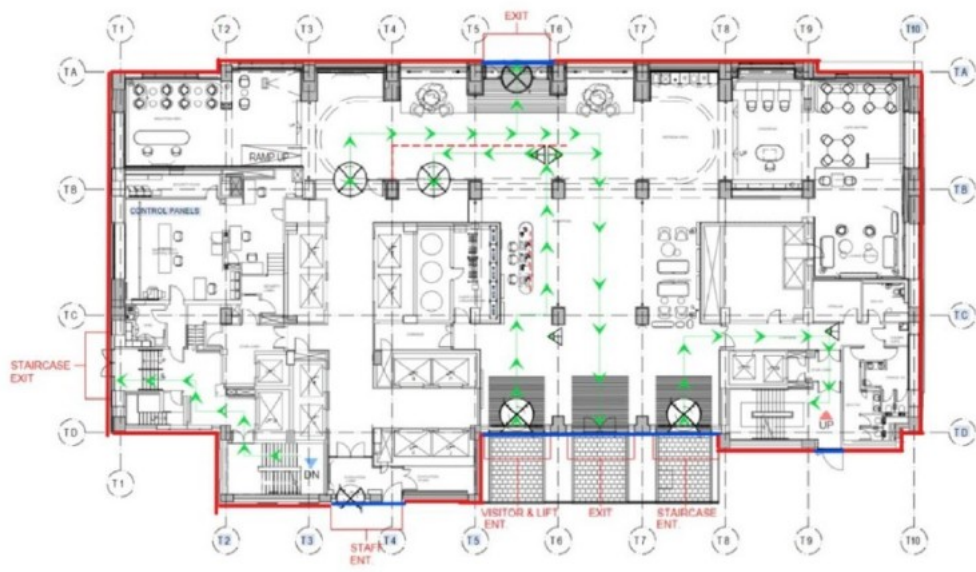
(list of email addresses)

1. **EXTINCTION REBELLION UK**
- 1.1 enquiries@extinctionrebellion.uk
- 1.2 press@extinctionrebellion.uk
- 1.3 xrvideo@protonmail.com
- 1.4 xr-action@protonmail.com
- 1.5 xraffinitysupport@protonmail.com
- 1.6 xr-arrestwelfare@protonmail.com
- 1.7 artsxr@gmail.com
- 1.8 xr-CitizensAssembly@protonmail.com
- 1.9 xr.connectingcommunities@gmail.com
- 1.10 xrdemocracy@protonmail.com
- 1.11 xrnotables@gmail.com
- 1.12 integration@rebellion.earth
- 1.13 xr-legal@riseup.net
- 1.14 press@extinctionrebellion.uk
- 1.15 xr-newsletter@protonmail.com
- 1.16 xr-peoplesassembly@protonmail.com
- 1.17 xrpoliceliaison@protonmail.com
- 1.18 rebelringers@rebellion.earth
- 1.19 xr.regenerativeculture@gmail.com
- 1.20 xr-regionaldevelopment@protonmail.com
- 1.21 RelationshipsXRUK@protonmail.com
- 1.22 xr.mandates@gmail.com
- 1.23 socialmedia@extinctionrebellion.uk
- 1.24 xrsocialmediaevents@gmail.com
- 1.25 eventsxr@gmail.com
- 1.26 xrbristol.regional@protonmail.com
- 1.27 xrcymru@protonmail.com
- 1.28 xr.eastengland@protonmail.com

- 1.29 xrlondoncoord@gmail.com
- 1.30 XRMidlands@protonmail.com
- 1.31 xrne@protonmail.com
- 1.32 support@xrnorth.org
- 1.33 xrni@rebellion.earth
- 1.34 xrscotland@gmail.com
- 1.35 XR-SouthEastRegionalTeam@protonmail.com
- 1.36 xr.regional.sw@protonmail.com
- 1.37 talksandtraining.xrbristol@protonmail.com
- 1.38 xrcymrutalksandtraining@gmail.com
- 1.39 eoexrtnt@protonmail.com
- 1.40 xrlondoncommunityevents@gmail.com
- 1.41 xrmidlandstraining@protonmail.com
- 1.42 XRNE.training@protonmail.com
- 1.43 xrnw.training@gmail.com
- 1.44 xryorkshire.training@gmail.com
- 1.45 xrni.tt@rebellion.earth
- 1.46 talksandtrainings.scotland@extinctionrebellion.uk
- 1.47 xrttse@gmail.com
- 1.48 xrsw.trainings@gmail.com
- 2. **JUST STOP OIL**
- 2.1 Ring2021@protonmail.com
- 2.2 juststopoil@protonmail.com
- 2.3 youthclimateswarm@protonmail.com
- 3. **YOUTH CLIMATE SWARM**
- 3.1 youthclimateswarm@protonmail.com

The screenshot displays the MapSearch application interface. At the top, there are search input fields for 'Postcode' (containing 'YO427857') and 'Title number' (containing 'TOL0462'). Below these are fields for 'Street name only' and 'Town or locality'. A 'Search' button is visible. To the right, a list of 'Titles (3 of 3 loaded)' is shown, including 'UNIT 12 CASSON SQUARE LONDON SE1 7BQ', 'STAIRCASE LEADING FROM THE SHELL CENTRE CASSON SQUARE LONDON SE1 7BQ', and 'SHELL CENTRE YORK ROAD LONDON SE1 7NA'. The main map area shows a street view of York, with 'Shell Centre' highlighted by a red rectangle. Other labels on the map include 'York Road (A2020)', 'Sutton Walk', 'Waterloo Underground Station', 'Casson Square', 'Sculpture', 'Sourbank Place', 'Miner Place', and 'Belvedere Road'. A scale bar at the bottom right indicates 10m. The bottom of the screen shows a copyright notice: '© Crown copyright and database rights 2022 Ordnance Survey 100062316. Use of this data is subject to Ordnance Survey licence terms and conditions.'

Tower Reception



Amended under Slip Rule CPR r40.12

Claim No: QB-2022-001420

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Before: Mrs Justice Hill DBE

On: 23 May 2023

BETWEEN:

SHELL U.K. OIL PRODUCTS LIMITED

- 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**

Defendant



ORDER

PENAL NOTICE

**IF YOU, THE DEFENDANTS, DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF
COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

IMPORTANT NOTICE TO DEFENDANTS

**This Order prohibits you from doing the acts set out in this Order. You should read it
very carefully. You are advised to consult a solicitor as soon as possible.**

**Any other person who knows of this Order and does anything which helps or permits the
Defendants to breach the terms of this order may also be held to be in contempt of
Court and may be imprisoned, fined, or have their assets seized.**

**A Defendant who is an individual who is ordered not to do something must not do it
himself or in any other way. He must not do it through others acting on his behalf or on
his instructions or with his encouragement.**

You have the right to ask the Court to vary or discharge this Order (which is explained below).

RECITALS

UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Centre Tower Proceedings

AND UPON a review of the order of Bennathan J dated 3 May 2022 in respect of the Shell Haven Proceedings

AND UPON a review of the order of Johnson J dated 17 May 2022 (as amended on 20 May 2022) in respect of the Shell Petrol Stations Proceedings (**“the 2022 Shell Petrol Stations Injunction Order”**)

AND UPON hearing Myriam Stacey KC and Joel Semakula for the Claimant and no other person appearing

AND UPON hearing Stephen Simblet KC for Ms Branch and no other person appearing

AND UPON READING the documents set out in the First Schedule to this Order

AND UPON the Claimant indicating that it will provide to any Defendant copies of further evidence or other documents filed in these proceedings upon request from time-to-time at an email address provided to the Claimant

AND UPON the Claimant giving and the Court accepting the undertakings set out in Second Schedule to this Order

AND UPON the Court being satisfied having reviewed the 2022 Shell Centre Petrol Stations Injunction Order that it should be continued, for the reasons given in the judgment handed down on 23 May 2023 with neutral citation number [2023] EWHC 1229 (KB)

AND UPON the Claimant confirming that this Order is not intended to prohibit any lawful protest outside any of the Shell Petrol Stations (as defined herein) in so far as any such protest does not obstruct vehicular access to the said Shell Petrol Stations

IT IS ORDERED:

DEFINITIONS

1. For the purposes of this Order, **“Shell Petrol Station”** means all Petrol Stations in England and Wales displaying Shell branding (including any retail unit forming a part of such a petrol station, whatever the branding of the retail unit).

INJUNCTION

2. This Order shall continue to operate until trial or further order or with a backstop of 23:59 on 12 May 2024 (“the backstop date”), unless varied, discharged or extended by further order, whichever is sooner.
3. The Defendants and each of them must not do any of the acts listed in paragraphs 4 and 5 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.
4. The acts referred to in paragraph 3 of this Order are:
 - a. directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt or to a building within the Shell Petrol Station.
 - b. causing damage to any part of a Shell Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;
 - c. operating or disabling any switch or other device in or on a Shell Petrol Station so as to interrupt the supply of fuel from that Shell Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Shell Petrol Station.
 - d. Causing damage to any part of a Shell Petrol Station, whether by:
 - i. affixing or locking themselves, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station;
 - ii. erecting any structure in, on or against any part of a Shell Petrol Station;
 - iii. spraying, painting, pouring, depositing or writing in any substance on to any part of a Shell Petrol Station.
5. A Defendant who is ordered not to do something must not:
 - a. do it himself/herself/themselves or in any other way;
 - b. do it by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement or assistance.

THE REVIEW

6. If and to the extent any of the Shell Orders granted on 23 May 2023 in respect of claim numbers QB-2022-001420 (Shell Petrol Stations Proceedings), QB-2022-001259 (Shell Centre Tower Proceedings) and QB-2022-001241 (Shell Haven Proceedings) remain in place on the backstop date, those Orders shall again be reviewed at a hearing to be fixed to take place in April 2024 with a time estimate of 1.5 days. For that purpose the Claimant’s solicitors shall

by 4pm on 28 February 2024 apply (using one application notice) to the King's Bench Judges' Listings Office for the matter in respect of all three orders to be listed and shall provide for notice of the listing and the date as listed to be served by uploading a notice of the hearing to <http://www.noticespublic.com/> by 4pm no later than 10 days before the hearing date.

AMENDMENT OF THE CLAIM FORM AND PARTICULARS OF CLAIM

7. Pursuant to CPR r.19.4(1) and r.17.1(3), the Claimant has permission to amend the description of the Defendant in the claim form and Particulars of Claim to that in the Third Schedule.

SERVICE

8. Pursuant to CPR r.6.15 and r.6.27 and rr.81.4(c) and (d), service of this Order shall be validly effected by;
- a. replacing the warning notices currently affixed at each Shell Petrol Station, so as to include the information at paragraph 9 below;
 - b. procuring that a notice containing the information indicated at paragraph 9 below is:
 - i. uploaded to <http://www.noticespublic.com/>;
 - ii. sent to the email addresses set out in the Fourth Schedule of this Order;
 - iii. sent to any person who has previously requested a copy of documents in these proceedings from the Claimant or its solicitors, either by post or email (as was requested by that person).
9. The notices shall (i) warn of the existence and general nature of the relevant Order, and of the consequences of breaching it; state that (ii) the relevant Order was reviewed at a hearing held on 25-6 April 2023; (iii) the relevant Order continues; (iv) the relevant Order is to be reviewed again at a hearing to be listed in April 2024; (v) any person affected by the Order may apply for it to be varied or discharged (vi) the Claimant's solicitors can be contacted for details as to the time and date of that hearing; and (vii) a copy of this order may be obtained from <http://www.noticespublic.com/>.
10. Pursuant to CPR r.6.15 and r.6.27, service of the Amended Claim Form and any ancillary documents shall be validly effected by;
- c. uploading the Amended Claim Form and any ancillary documents <http://www.noticespublic.com/>;
 - d. sending the Amended Claim Form and any ancillary documents to the email addresses set out in the Fourth Schedule of this Order;

- e. sending the Amended Claim Form and any ancillary documents to any person who has previously requested a copy of documents in these proceedings from the Claimant or its solicitors, either by post or email (as was requested by that person).
11. Uploading a copy of this Order and the Amended Claim Form and any ancillary documents to <http://www.noticespublic.com/> combined with the taking of such steps as are set out in paragraphs 8, 9 and 10 above shall be good and sufficient service of this Order and the Amended Claim Form and any ancillary documents upon the Defendant.
12. Pursuant to CPR 6.15(4)(b) and 6.27, this Order shall be deemed to be served on the latest date on which all the methods of service referred to in paragraphs 8, 9 and 11 have been completed in respect of this Order, such date to be verified by the completion of a certificate of service or witness statement.
13. Pursuant to CPR 6.15(4)(b) and 6.27, the Amended Claim Form and any ancillary documents shall be deemed to be served on the latest date on which all the methods of service referred to in paragraphs 10 and 11 have been completed in respect of the Amended Claim Form and any ancillary documents, such date to be verified by the completion of a certificate of service or witness statement.
14. The Court will provide sealed copies of this Order and Amended Claim Form to the Claimant's solicitors for service (whose details are set out below).

FURTHER DIRECTIONS

15. As a result of the connected parties and activities caught by the terms of this Order the Court considers it appropriate for these proceedings to be managed together with claim numbers QB-2022-001259 and QB-2022-001241 (but not for those claims to be consolidated) for the time being subject to any further order or direction by the Court of its own motion or following an application by either party for the claim to be heard or considered separately.
16. Any person affected by this Order may apply to the Court at any time to vary or discharge it but if they wish to do so they must inform the Claimant's solicitors by email to the address specified below 48 hours before making such application of the nature of such application and the basis for it.
17. The Claimant has liberty to apply for further directions to progress the matter to trial or to vary or discharge this Order.

COSTS

18. Costs reserved.

COMMUNICATION WITH THE CLAIMANT

19. The Claimant's solicitors and their contact details are amended to the following:

Eversheds Sutherland (International) LLP

Bridgewater Place, Water Lane Leeds LS11 5DR

(Reference OLDFIEA/SHELL)

shell.service@eversheds-sutherland.com

First Schedule

(Documents read by the court in considering the making of this Order)

In the course of considering making of this Order, the Court read the following documents:

1. Application notice dated 30 March 2023
2. Witness Statement of Christopher Prichard-Gamble dated 30 March 2023
3. Exhibit CPG1
4. Witness Statement of Keith Garwood dated 30 March 2023
5. Exhibit KG3
6. Witness Statement of Fay Lashbrook dated 30 March 2023
7. Exhibit FL1
8. Witness Statement of Benjamin Austin dated 30 March 2023
9. Exhibit BA3
10. Witness Statement of Alison Judith Oldfield dated 29 March 2023
11. Exhibit AJ01
12. Second Witness Statement of Alison Judith Oldfield dated 19 April 2023
13. Exhibit AJ02
14. Application Notice dated 19 April 2023
15. Third Witness Statement of Alison Judith Oldfield dated 19 April 2023
16. Exhibit AJ03
17. First Witness Statement of Jessica Branch dated 24 April 2023
18. Second Witness Statement of Jessica Branch dated 26 April 2023
19. Witness Statement of Nancy Friel dated 26 April 2023

Second Schedule

The Claimant gave the following undertakings to the Court:

1. To identify and name defendants and apply to add them as named defendants to this Order as soon as reasonably practicable.
2. To pay any damages which the Defendants (or any other party served with or notified of this Order) shall sustain as a result of the making of this Order, and which the Court considers ought to be paid.

Third Schedule

(Amended description of Defendant)

[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 ENVIRONMENTAL PROTEST CAMPAIGNS WITH THE INTENTION OF DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION]

Fourth Schedule

(list of email addresses)

1. EXTINCTION REBELLION UK

- a. enquiries@extinctionrebellion.uk
- b. press@extinctionrebellion.uk
- c. xrvideo@protonmail.com
- d. xr-action@protonmail.com
- e. xraffinitysupport@protonmail.com
- f. xr-arrestwelfare@protonmail.com
- g. artsxr@gmail.com
- h. xr-CitizensAssembly@protonmail.com
- i. xr.connectingcommunities@gmail.com
- j. xrdemocracy@protonmail.com
- k. xrnotables@gmail.com
- l. integration@rebellion.earth
- m. xr-legal@riseup.net
- n. press@extinctionrebellion.uk
- o. xr-newsletter@protonmail.com
- p. xr-peoplesassembly@protonmail.com
- q. xrpoliceliaison@protonmail.com
- r. rebelringers@rebellion.earth
- s. xr.regenerativeculture@gmail.com
- t. xr-regionaldevelopment@protonmail.com
- u. RelationshipsXRUK@protonmail.com
- v. xr.mandates@gmail.com
- w. socialmedia@extinctionrebellion.uk
- x. xrsocialmediaevents@gmail.com
- y. eventsxr@gmail.com
- z. xrbristol.regional@protonmail.com
- aa. xrcymru@protonmail.com

bb. xr.eastengland@protonmail.com
cc. xrlondoncoord@gmail.com
dd. XRMidlands@protonmail.com
ee. xrne@protonmail.com
ff. support@xrnorth.org
gg. xrni@rebellion.earth
hh. xrscotland@gmail.com
ii. XR-SouthEastRegionalTeam@protonmail.com
jj. xr.regional.sw@protonmail.com
kk. talksandtraining.xrbristol@protonmail.com
ll. xrcymrutalksandtraining@gmail.com
mm. eoexrtnt@protonmail.com
nn. xrlondoncommunityevents@gmail.com
oo. xrmidlandstraining@protonmail.com
pp. XRNE.training@protonmail.com
qq. xrnw.training@gmail.com
rr. xryorkshire.training@gmail.com
ss. xrni.tt@rebellion.earth
tt. talksandtrainings.scotland@extinctionrebellion.uk
uu. xrttse@gmail.com
vv. xrsw.trainings@gmail.com

2. **JUST STOP OIL**

a. Ring2021@protonmail.com
b. juststopoil@protonmail.com
c. youthclimateswarm@protonmail.com

3. **YOUTH CLIMATE SWARM**

a. youthclimateswarm@protonmail.com

1 IN THE HIGH COURT OF JUSTICE
2 KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London WC2A 2LL

Monday, 11th March 2024

Before:
MR. JUSTICE SOOLE

- - - - -

BETWEEN:

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED
Claimant (QB-2022-001259)

SHELL U.K. OIL PRODUCTS LIMITED
Claimant (QB-2022-001420)

SHELL U.K. LIMITED
Claimant (QB-2022-001241)

- and -

PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING
KNOWN AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL
CENTRE TOWER") WITHOUT THE CONSENT OF THE CLAIMANT, OR
DAMAGING THE BUILDING OR DAMAGING OR BLOCKING THE ENTRANCES
TO THE SAID BUILDING
Defendant (QB-2022-001259)

PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE
KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED
IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE
CLAIMANT, OR BLOCKING THE ENTRANCES TO THAT SITE
Defendant (QB-2022-001241)

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
Defendant (QB-2022-001420)

- - - - -

Transcript of the Stenograph Notes
of Marten Walsh Cherer Ltd.
2nd Floor, Quality House, 6-9 Quality Court,
Chancery Lane, London, WC2A 1HP.
Tel No: 020 7067 2900. DX: 410 LDE
Email: info@martenwalshcherer.com
Website: www.martenwalshcherer.com

- - - - -

MISS MYRIAM STACEY KC (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**

THE DEFENDANTS did not appear and were not represented

MR. CHARLES LAURIE (a proposed named defendant) appeared **In Person**

PROCEEDINGS

[Transcript prepared without access to Supplemental bundle]

STACEY KC

MR. JUSTICE SOOLE: Yes?

MISS STACEY: My Lord, may it please you. I appear on behalf of the claimants in this matter and Mr. Laurie, Mr. Charles Laurie ----

MR. JUSTICE SOOLE: Good morning.

MISS STACEY: ---- who is not currently a defendant but he is one of the proposed named defendants that form the subject of our application.

My Lord, this ----

MR. JUSTICE SOOLE: Thank you very much for attending. What I will do is hear from Miss Stacey first of all and you will have every opportunity to say anything you want to; all right? Thank you very much.

There is nobody else here who is ----

MISS STACEY: There is nobody else here. My Lord, you will have perhaps gathered -- I will come to some housekeeping -- but in a nutshell this application is for three matters: first, for joinder of in addition I say, to persons unknown, an additional 14 named defendants which are set out in a schedule which I will take your Lordship to. That is the first matter. The second matter is an associated application following on from the first, for alternative service.

MR. JUSTICE SOOLE: Of this application?

MISS STACEY: Of this application, in respect of only two of those

1 STACEY KC

2 individuals for whom social media accounts have been obtained
3 in addition to their personal addresses.

4 MR. JUSTICE SOOLE: Is that not a prior application?

5 MISS STACEY: No, my Lord, because we served them at their last
6 known addresses which were provided to us from the police.
7 The basis of the alternative service is a belt and braces type
8 situation, where we do not have the definitive proof of
9 address but we have been able to identify two social media
10 accounts at which they have been served.

11 MR. JUSTICE SOOLE: Yes. Maybe in my reading I was too hasty,
12 I am not clear: what is the position under the existing
13 orders for the service of applications?

14 MISS STACEY: The applications fall currently under the persons
15 unknown alternative service provision, so they will stand ----

16 MR. JUSTICE SOOLE: Yes, which order are we looking at.

17 MISS STACEY: We are looking at Hill J's order, she is the last
18 word, and she made an order dealing with all ----

19 MR. JUSTICE SOOLE: Can you take me to that order?

20 MISS STACEY: Yes, of course. Do you have a hard copy bundle, my
21 Lord?

22 MR. JUSTICE SOOLE: Yes.

23 MISS STACEY: It is behind tab 4 at page 58. No, that is the
24 order in relation to the police, I am so sorry. The
25 substantive order, just bear with me ----

1 STACEY KC

2 MR. JUSTICE SOOLE: It would be very helpful if the index
3 identified orders and things rather than just exhibits to
4 witness statements. I found that rather unhelpful yesterday
5 afternoon when I was trying to... I know there is a lot of
6 work.

7 MISS STACEY: I apologise to you and I will pass that back. It is
8 at page 78, my Lord. It is an order dated 23rd May and the
9 service provisions are dealt with at paragraph 8 on page 81.
10 You will see there that that deals with the service of that
11 order, so that is paragraph 8(a) to place warning notices up.

12 MR. JUSTICE SOOLE: Yes, that is what I was looking for.

13 MISS STACEY: Is that what your Lordship was looking for?

14 MR. JUSTICE SOOLE: Yes, that is paragraph 10.

15 MISS STACEY: Indeed, paragraph 10 any ancillary documents shall
16 be sent in the manner set out in that paragraph.

17 MR. JUSTICE SOOLE: What are "ancillary documents" for these
18 purposes?

19 MISS STACEY: Ancillary documents have not specifically been
20 defined but the way we have read it has been to serve any
21 further document in the proceedings. That includes, my Lord

22 ----

23 MR. JUSTICE SOOLE: Yes, I see but on one reading it might be said
24 that it was those things connected to an amended claim form or
25 amended particulars of claim.

1 STACEY KC

2 MISS STACEY: That is not how we read it. We have been careful to
3 ensure that any document my Lord, that includes the
4 supplemental bundle, my skeleton argument and the hearing
5 bundle, have all been served in the manner specified in that
6 order. That is in Ms. Oldfield's 5th witness statement where
7 she sets out the steps taken.

8 MR. JUSTICE SOOLE: I see in 10(e) it is effecting service by
9 "sending the Amended Claim Form and any ancillary documents to
10 any person who has previously a copy of documents in these
11 proceedings ----"

12 MISS STACEY: Yes, indeed.

13 MR. JUSTICE SOOLE: "... either by post or e-mail" as was
14 requested."

15 MISS STACEY: Yes, that is in an addition to persons unknown.
16 I can take you through Ms. Oldfield's fifth statement. But
17 what essentially it boils down to is that persons unknown have
18 been served in the manner specified in paragraph 8.

19 MR. JUSTICE SOOLE: Paragraph 8 is serving that order.

20 MISS STACEY: Indeed, but all documents have been served in that
21 manner, so all subsequent documents have also been served in
22 that manner, my Lord. That includes this application. It
23 includes witness statements in this application and it
24 includes the hearing bundle, the skeleton and supplemental
25 bundle.

1 STACEY KC

2 MR. JUSTICE SOOLE: Sorry, when you say "in that manner", do you
3 mean as in 8(a) and (b)?

4 MISS STACEY: 8 is a stand-alone, you fix the warning notice in
5 relation to the order. (b) is what I am talking about. In
6 (b) you have uploaded a link which contains the additional
7 documents, so that they can be accessed. That is (b)(i).

8 MR. JUSTICE SOOLE: 8(b) is only concerned with service of this
9 order.

10 MISS STACEY: Indeed. But, my Lord, what I am saying is
11 additional documents have also been served in accordance with
12 8(b).

13 MR. JUSTICE SOOLE: I do not understand how you say "in accordance
14 with" because 8(b) is only concerned with the order.

15 MISS STACEY: In the manner specified, perhaps not strictly "in
16 accordance with".

17 MR. JUSTICE SOOLE: No.

18 MISS STACEY: In the manner specified in 8(b)(i) which is the
19 upload. So the link which you see there at 8(b)(i) enables
20 persons unknown, if they click on it, to see not only the
21 order but also subsequent documents that are relied on by the
22 claimant in these proceedings.

23 MR. JUSTICE SOOLE: What was the order before The order of Hill J?

24 MISS STACEY: There were three orders. There was Johnson J's
25 order and there was Bennathan J's order.

1 STACEY KC

2 MR. JUSTICE SOOLE: What do they provide in terms of service of
3 documents?

4 MISS STACEY: Essentially the same thing.

5 MR. JUSTICE SOOLE: Can I see those please?

6 MISS STACEY: Yes. Can you just bear with me? *(Pause)* We can
7 get them. I have been told they are not in court, my Lord.
8 I had expected them to be, but we can make ----

9 MR. JUSTICE SOOLE: You are probably right, but I am afraid things
10 do go wrong and I just want to see and trace it through
11 myself.

12 MISS STACEY: I fully recognise and fully understand that, my
13 Lord. All I can say to your Lordship is that we do not have
14 them physically here but we can pull them up and make them
15 available. I do not know whether your Lordship would prefer
16 to look at them in hard copy.

17 MR. JUSTICE SOOLE: I would much prefer to.

18 MISS STACEY: That will take a little time.

19 MR. JUSTICE SOOLE: They can be forwarded to the Court Associate.

20 MISS STACEY: Yes, that can certainly be done if I can be provided
21 with the e-mail contact details.

22 MR. JUSTICE SOOLE *(To the Court Associate)*: Could you provide the
23 contact details and then forward them to my email?

24 MISS STACEY: Just so we are clear, my Lord, you would like the
25 orders that preceded Hill J's order?

STACEY KC

MR. JUSTICE SOOLE: Yes.

MISS STACEY: That can be done, I am told, quite quickly, my Lord.

MR. JUSTICE SOOLE: I must say I would have thought "ancillary documents" meant ancillary to the claim form.

MISS STACEY: To is substantive document forming the subject of the paragraph; I understand that, my Lord. I should have taken your Lordship to paragraph 10. When I said "in accordance with" it should strictly have been 10. On our reading of "ancillary documents" which is a generous interpretation, namely encompassing all future documents, we have uploaded them to the link set out in 10(c). We have sent them to the e-mail addresses specified in 10(d). I do not know why the paragraph numbers have gone a bit awry, and we have sent them to any persons ----

MR. JUSTICE SOOLE: I think they are a consequence of 8(a) and (b) and then 10 has carried on as (c) and (d).

MISS STACEY: Yes, I think that is right. We have also sent them to any persons who have requested as per 10(e). All of that is set out in the fifth witness statement of Alison Oldfield which is contained in the supplemental bundle.

MR. JUSTICE SOOLE: I will need to be taken to that. I have read that once but I would like to be taken through that.

MISS STACEY: My Lord, that is what I meant by "in accordance with". It is a generous interpretation, a cautious approach

1 STACEY KC

2 if you like. We have ensured that all documents we are
3 relying on have been served in those manners.

4 MR. JUSTICE SOOLE: An approach "generous" ----

5 MISS STACEY: On the wording.

6 MR. JUSTICE SOOLE: Generous to whom?

7 MISS STACEY: Well, cautious, in terms of one could have read
8 "ancillary" requiring us simply to... Generous to us
9 I suppose, my Lord.

10 MR. JUSTICE SOOLE: Yes.

11 MISS STACEY: One could see that that is an alternative service
12 provision ----

13 MR. JUSTICE SOOLE: I do not mean anything pejoratively ----

14 MISS STACEY: No, no.

15 MR. JUSTICE SOOLE: ---- but it is not generous to the defendants.

16 MISS STACEY: No. It is simply on the reading of the language we
17 anticipated that we would need to serve by alternative means.
18 Those are the means that the court has endorsed. It may be
19 that that needs to form the subject of any order I am asking
20 ----

21 MR. JUSTICE SOOLE: That is one reason I would like to see the
22 earlier orders. Quite often in these sorts of cases -- and
23 I have done quite a number of these now -- there is some
24 broader provision which says "and other documents". So I was
25 wondering whether that is somewhere in those orders.

1 STACEY KC

2 MISS STACEY: We can look at that my Lord, yes.

3 MR. JUSTICE SOOLE: Because that has to be done in advance. That
4 is why I was wondering whether you were asking for
5 retrospective alternative service.

6 MISS STACEY: My Lord, I am not, on the basis of the current
7 application because of the interpretation we placed on the
8 wording of paragraph 10. Insofar as you are not with me on
9 that wording, I recognise that I would need retrospective
10 endorsement. There is provision in the CPR that entitles the
11 court to order that steps already taken ----

12 MR. JUSTICE SOOLE: Yes.

13 MISS STACEY: ---- are sufficient for the purposes of alternative
14 service and I would lean on that provision of the CPR, if we
15 get there. That is in relation to persons unknown, my Lord,
16 and there are also steps that have been taken in relation to
17 the main defendants, which does form the subject of a specific
18 application if you are with me on the joinder.

19 What we have done there, if I can summarise, is
20 pre-emptively, if you like, we have engaged with all the named
21 persons in the schedule for the purposes of the undertakings
22 that we requested they enter into. That was, obviously, a
23 step we needed to take in order to engage. That is not
24 service strictly speaking; that is engagement. We have served
25 the documents namely this application and documents in the

1 STACEY KC

2 application on each of those individuals at the postal
3 addresses which have been provided to us by the police,
4 pre-emptively.

5 MR. JUSTICE SOOLE: I do not know what "pre-emptively" means.

6 MISS STACEY: We have already done it. I am not saying that is
7 what I propose to do. If you are with me on joinder, we will
8 subsequently serve them. They have already been provided with
9 the documents for the purposes of this application. Again,
10 that is set out in the witness statement of Ms. Oldfield in
11 the supplemental bundle.

12 MR. JUSTICE SOOLE: And each case by First Class Post?

13 MISS STACEY: In each case by Special Delivery, First Class Post,
14 and then by hand in respect of those persons where we could
15 not get a definitive proof of delivery which, my Lord, leaves
16 three individuals who we have not been able to serve by hand
17 as a ----

18 MR. JUSTICE SOOLE: Just before we move on to those three,
19 personal service, what is the provision under which you have
20 made that form of service?

21 MISS STACEY: 6.9. It is in (2) in the first column of the ----

22 MR. JUSTICE SOOLE: I am just looking at (1) this rule applies
23 where 6.5(1), where three things do not apply. So 6.5(1) and
24 (2) is only concerned with personal service of the claim form,
25 as opposed the other documents.

STACEY KC

MISS STACEY: Yes, my Lord.

MR. JUSTICE SOOLE: 6.7 does not arise. Well, wait a moment. So 6.9 is to do with service of the claim form so we are applying 6.15, are we not, other documents; is that right?

MISS STACEY: 6.15.

MR. JUSTICE SOOLE: Or 6.27?

MISS STACEY: 6.15 is the other documents in relation to the terms of service.

MR. JUSTICE SOOLE: Yes, but do you not start at 6.27? Rule 6.15 applies to any documents in the proceedings as it applies to the claim form.

MISS STACEY: Yes, and that reads into the other documents in addition to the claim form, the provisions of 6.9.

MR. JUSTICE SOOLE: And then we go to 6.15.

MISS STACEY: Which is the alternative service provision, my Lord.

MR. JUSTICE SOOLE: *(Pause)* So it is not 6.9, is it?

MISS STACEY: 6.9 is ----

MR. JUSTICE SOOLE: Sorry, I just want it absolutely clear.

MISS STACEY: My Lord, I am sorry if I am not being clear. 6.9 is the provision which provides for service at the last known address in respect of an individual. We have effectively viewed those provisions. We have been provided with the last known address and therefore in light of the obligation to serve individuals at such an address that is the starting

1 STACEY KC

2 point, if you like. That is how we served the provisions,
3 that is how we served the documents. We have done so by
4 Special Delivery by First Class Post. I recognise that I have
5 not strictly included in the application for alternative
6 service provision that the court endorse that as a means of
7 alternative service. That is perhaps something I need to do.
8 Those are the steps that are taken.

9 MR. JUSTICE SOOLE: 6.9(2), does that apply to documents to other
10 than the claim form?

11 MISS STACEY: It refers to specifically to "the claim form".

12 MR. JUSTICE SOOLE: Yes, but does it apply to documents other than
13 the claim form? And if so, why?

14 MISS STACEY: I do not think I could say it does, my Lord, no.

15 The purpose of this provision is obviously to subject the
16 defendant to the jurisdiction of the court to ensure they are
17 served with the claim form specifically.

18 MR. JUSTICE SOOLE: Yes, so ----

19 MISS STACEY: Then you have 6.15 which is: "Service of the claim
20 form by alternative [means] ..."

21 MR. JUSTICE SOOLE: 6 point?

22 MISS STACEY: 15.

23 MR. JUSTICE SOOLE: Yes.

24 MISS STACEY: And then, my Lord ----

25 MR. JUSTICE SOOLE: For which purpose you have to apply.

1 STACEY KC

2 MISS STACEY: For which purpose, I accept, you have to apply. You
3 then have 6.27, my Lord, which extends 6.15 to other
4 documents.

5 MR. JUSTICE SOOLE: You have to apply under 6.15/27 to serve other
6 documents by alternative means.

7 MISS STACEY: Yes, indeed. Where we are at the moment, my Lord,
8 is that no one has been joined. So the starting point is that
9 there is an application for joinder, and there are no named
10 defendants yet.

11 What we have been seeking to do is, if you like,
12 anticipate what could be required if one were to come before a
13 court in circumstances where the court is with us and it is
14 content to join such persons and to ensure that we have done
15 everything we would need to do in that scenario.

16 MR. JUSTICE SOOLE: Is not the natural place then to go to the
17 order for joining new parties?

18 MISS STACEY: Yes.

19 MR. JUSTICE SOOLE: Which I appreciate is what the earlier orders
20 are requiring and the case law requires.

21 MISS STACEY: Exactly. It is CPR part 19.

22 MR. JUSTICE SOOLE: Yes, 19 point?

23 MISS STACEY: I think it is in my skeleton, the provisions.

24 MR. JUSTICE SOOLE: 4?

25 MISS STACEY: Yes.

1 STACEY KC

2 MR. JUSTICE SOOLE: 19.4(1) "permission is required" once the
3 claim form has been served, which it has been.

4 MISS STACEY: Yes, and must be supported by evidence, must be made
5 under part 23.

6 MR. JUSTICE SOOLE: Under sub-rule (3) "may be made without
7 notice".

8 MISS STACEY: "(a) may be made without notice; and (b) must be
9 supported by evidence", indeed.

10 MR. JUSTICE SOOLE: You have purported to do with it notice.

11 MISS STACEY: We have purported to do it with notice, yes, indeed,
12 which is essentially what I mean by pre-emptively, if you
13 like. We wanted to ensure that they had ample opportunity to
14 see what we were doing in advance in order to give them
15 opportunity to attend.

16 Then you see sub-paragraph (7), my Lord, "... must be
17 served on (a) all parties ..." The parties at the present
18 moment are the persons unknown and we have done that.

19 MR. JUSTICE SOOLE: And any other... It would have to be on all
20 the other defendants.

21 MISS STACEY: And those persons who have asked in the past for
22 copies. We have done that.

23 MR. JUSTICE SOOLE: And those who are named defendants.

24 MISS STACEY: Exactly. We have done that, but it is not service
25 in the sense of being on a party because they are not yet

1 STACEY KC

2 parties. But they are persons "effected by the order".

3 MR. JUSTICE SOOLE: Once an order has been made they are parties.

4 MISS STACEY: They are indeed. It says on "all parties" must be
5 served subsequently, but I am saying not in advance
6 necessarily.

7 MR. JUSTICE SOOLE: It would not be an order in advance.

8 MISS STACEY: No, but it would come within (b) I suggest because
9 "any other person affected by the order"; they are persons who
10 would be affected by the order.

11 MR. JUSTICE SOOLE: No, no, but (7) is "An order for the removal",
12 it is not an application for an order.

13 MISS STACEY: My Lord, you are right, yes. If you were to make
14 the order then it would need to be served on those persons
15 ----

16 MR. JUSTICE SOOLE: Yes.

17 MISS STACEY: ---- once they have become parties which we fully
18 intend to do.

19 MR. JUSTICE SOOLE: You might say sub-rule (9) speaks the other
20 way, consistent with what you said before: "A new defendant
21 does not become a party to the proceedings until the amended
22 claim form has been served on them."

23 MISS STACEY: That is strictly not subjected to the jurisdiction
24 of the court per *Cameron*.

25 MR. JUSTICE SOOLE: Yes.

1 STACEY KC

2 MISS STACEY: But in order to deal with these nuances and
3 technical difficulties, what we have done, as I have been
4 trying to explain to your Lordship, is we are anticipating
5 what we will need to do. But as I stand here today -- and
6 I will take you to the witness statement of Alison Oldfield --
7 we have served on persons unknown pursuant to the orders that
8 previously were made by the court, and we have ----

9 MR. JUSTICE SOOLE: Subject to interpretation of that order, yes.

10 MISS STACEY: Subject to the interpretation, indeed, your
11 Lordship's point. We have also sent to all named individuals
12 at the addresses, by Special Delivery First Class Post and by
13 hand where we have been able to, the documents so that the
14 analogous to personal service pursuant to 6.9. We have not
15 yet made an application for alternative service in relation to
16 those individuals.

17 MR. JUSTICE SOOLE: One way of dealing with that might be, given
18 that the power to add parties without notice, is to join the
19 parties and give them permission to apply to vary if they
20 think fit.

21 MISS STACEY: Precisely my Lord, yes.

22 My Lord, you will have this point I am sure, that we are
23 taking these steps in order predominantly, in order solely to
24 comply with the categories under the *Wolverhampton* Guidance to
25 ensure we are taking all the procedural requirements and can

1 STACEY KC

2 be said to be progressing the claims adequately. There has
3 been some delay but it has taken a great deal of time to
4 obtain all the disclosure from the police to carry out the
5 underlying scrutiny of the underlying evidence and to engage
6 with the named persons so as to ensure that we are properly
7 joining them and we are satisfied per our evidence that that
8 is indeed the case. That has coincided with the application
9 for further broader directions to bring the matter on.

10 If the court were not with me and was not prepared to
11 join any person, we would still, nevertheless, wish to proceed
12 to a final hearing against persons unknown because our primary
13 objective here is to ensure the continuation of this
14 injunction in circumstances where there remains a risk and we
15 are very concerned in relation to all three sides. But it is
16 a procedural step we need to take and that is why the
17 application is being made. It is not so much about committal
18 because these incidents were back in April 2022. It is more
19 about ensuring we are comply with what the Court of Appeal
20 says we need to do when ----

21 MR. JUSTICE SOOLE: When you say "not so much about committal"

22 -----

23 MISS STACEY: Sometimes people want to join specifically because
24 they want to pursue a committal hearing.

25 MR. JUSTICE SOOLE: Oh, I see.

1 STACEY KC

2 MISS STACEY: This is more a we want to progress the case and not
3 be in breach or flouting... in compliance with the duty that
4 the Court of Appeal has said that we specifically need to
5 comply with, namely where we have identified the persons who
6 fall within the category of persons unknown, they need to be
7 joined.

8 MR. JUSTICE SOOLE: Incidentally, these applications should always
9 be made, always require a hearing.

10 MISS STACEY: I ----

11 MR. JUSTICE SOOLE: I would have made exactly the same order as
12 Fordham J.

13 MISS STACEY: My Lord, I accept that it all needs to be properly
14 ventilated.

15 MR. JUSTICE SOOLE: Yes and also you cannot require on paper
16 judges to wade through and decide whether everything has been
17 ticked off, you just have to have a hearing. In other
18 proceedings I have made that clear.

19 MISS STACEY: I think the witness statements said if the court is
20 not content to deal with parts on paper. So, in circumstances
21 where there is not much time left, the hope is that some
22 directions might be given.

23 MR. JUSTICE SOOLE: I am afraid, it is going to be a very rare
24 case indeed where that will be done.

25 MISS STACEY: That is duly noted.

1 STACEY KC

2 Essentially, my Lord, I can take you, I am entirely in
3 your Lordship's hands, but I was going to go through a bit of
4 housekeeping first and explain what you have in terms of
5 paperwork and then take you through the applications one by
6 one, starting with joinder, then alternative service and then
7 the directions because I think, logically, that must come at
8 the end.

9 MR. JUSTICE SOOLE: I think what I might do now is the ask
10 Mr. Laurie if he wants to make any immediate short points that
11 he wants, as it were, to state so we know what we may be
12 having to debate. Then he will have an opportunity to give
13 more detail later on if he wants to do so.

14 MISS STACEY: My Lord, before you do that, it might help
15 Mr. Laurie, can I just explain in a nutshell what our position
16 is (I am not going to take you to the legal principles or the
17 evidence) in relation to why we say joinder is justified?
18 Mr. Laurie will have seen the skeleton, I am sure, but I can
19 give you a very short two-sentence summary ----

20 MR. JUSTICE SOOLE: All right.

21 MISS STACEY: ---- which may assist him.

22 What we say in relation to the joinder of all named
23 individuals, including Mr. Laurie, is they have first of all
24 been identified by the police as persons who have been
25 arrested carrying out the prohibited acts. That is the first

1 STACEY KC

2 point. The second point is we have carried out our own
3 independent analysis of the underlying evidence which was
4 provided.

5 MR. JUSTICE SOOLE: One moment.

6 MISS STACEY: We analysed the police's evidence. We have just not
7 simply taken what the police says at face value. We have
8 analysed it and made sure it tallies to the names of all those
9 persons arrested. We then wrote inviting undertakings to be
10 entered into, a promise, if you like, to the court that they
11 will not engage in the kind of activities that are prohibited
12 by the orders in the future. In relation to Mr. Laurie, no
13 such undertaking has been forthcoming.

14 MR. JUSTICE SOOLE: How many have provided them?

15 MISS STACEY: 14, 15. Actually 14 at the date of the application
16 one subsequent, so 15 in total.

17 MR. JUSTICE SOOLE: Is that Mr. Gingell, who is the extra one?

18 MISS STACEY: Indeed, yes. And there has been recent activity by
19 these very same protest groups. We have the evidence that
20 there is an ongoing threat. In all the circumstances, and
21 specifically in the absence of an undertaking, we cannot be
22 satisfied in relation to Mr. Laurie there is no such threat.

23 MR. JUSTICE SOOLE: Of course today I am not deciding anything
24 about future injunctions ----

25 MISS STACEY: No, no.

1 LAURIE

2 MR. JUSTICE SOOLE: ---- this is just procedural directions.

3 MISS STACEY: Indeed. But the inference I would invite the court
4 to make is that in the absence of an undertaking being
5 provided and in circumstances where he was arrested that is
6 sufficient for joinder.

7 MR. JUSTICE SOOLE: I will just hear from Mr. Laurie.

8 What are the main points you want to make? You can sit
9 or stand as you prefer?

LAURIE

MR. LAURIE: All I can say is if you found it confusing imagine how I found it confusing.

MR. JUSTICE SOOLE: I have not found it so much "confusing" as I have an obligation to make sure that the procedures are followed immaculately.

MR. LAURIE: I understand.

MR. JUSTICE SOOLE: You are right, that does take sometimes take some to sort out.

MR. LAURIE: There is such a thing as too much information. I think I have four Lever Arch files now and five e-mails of information, some of which duplicate each other, some are different. When I was working I used to deal with property law and things like that I so I am used to it. But I was confused.

MR. JUSTICE SOOLE: What I say in answer to that is that again the supplied information has often been the court and certainly often from me when I have said more information rather than less has to be provided.

MR. LAURIE: Okay.

MR. JUSTICE SOOLE: So it cuts both ways in that sense. I also appreciate a lot of people (do not like, unlike me, who like physical documents) prefer things electronically. I recall making people serve documents personally and then being told by a number of litigants in person they would much rather have

LAURIE

it by e-mail. To an extent I have learned a lesson.

Yes, please go on.

MR. LAURIE: I take what the representative said. I guess it is not the time to talk about it now, but I would just gently say that there is a huge list of 260 different actions provided in the documentation they gave to us.

MR. JUSTICE SOOLE: Yes.

MR. LAURIE: Approximately none of them relate to any of the things covered by the injunctions, so that would show we have fairly well ----

MR. JUSTICE SOOLE: You mean the protests?

MR. LAURIE: The protests. We have by the injunctions and the cover, and I do not think there are many in there that are... There are 260, I have not looked at them all. I scanned through it.

MR. JUSTICE SOOLE: Yes.

MR. LAURIE: But, yes, I have not given ----

MR. JUSTICE SOOLE: I think that evidence has been put in to say there is an ongoing general campaign, therefore it may pop up anywhere. You do not look at one place at a time and say, "That is finished there", because the tactics in a campaign are changing all the time. I think that is the argument.

MR. LAURIE: Yes, I had understood that. The counter to that is there are lots of protests in here that have taken place and

1 LAURIE

2 the people do not take out injunctions and engage with
3 protestors. I would suggest that Shell need to actually grow
4 up and understand that they are doing very controversial
5 things and they need to engage with protestors rather than
6 using the courts to protect themselves from a proper debate.

7 I will leave it at that for the moment.

8 MR. JUSTICE SOOLE: Those are points that can be taken.

9 I anticipate what is going to be discussed but there will be a
10 further interim injunction application. We are not going to
11 be having a trial by 12th May. I do not see at the moment how
12 that can possibly take place. So these points can be aired by
13 any defendant who wishes to do so.

14 I will have to look at the law closely on these matters.

15 I am doing so; hence my questions. But do you have any
16 general point on objection to being joined as a defendant?

17 MR. LAURIE: Apart from what I just said, I mean, I accept that I
18 was taking part in the protest. I would also gently point out
19 that there has not been a criminal trial for this yet. I have
20 been advised by my lawyer to plead not guilty.

21 MR. JUSTICE SOOLE: Yes, you have been charged.

22 MR. LAURIE: So ----

23 MR. JUSTICE SOOLE: I must also remind you of your right to
24 privilege against self-incrimination; you are not obliged to
25 say anything about that.

1 STACEY KC

2 MR. LAURIE: Okay.

3 MR. JUSTICE SOOLE: It is matter for you if you wish to do so, you
4 have a right to silence on that.

5 MR. LAURIE: I think it is generally accepted I was there.

6 MR. JUSTICE SOOLE: Thank you, that is ----

7 MR. LAURIE: I think that is all I can say.

8 MR. JUSTICE SOOLE: I think that is probably sufficient for the
9 moment, to give, as it were, your headlines on points.

1 STACEY KC

2 MISS STACEY: My Lord, just an update on service in the previous
3 orders, which I think are being sent through. Apparently they
4 have been sent through. Paragraph 9 of Johnson J's order,
5 which was the one that proceeded May J for the service
6 stations, that did deal, my Lord, with further documents.

7 MR. JUSTICE SOOLE: That does not surprise me.

8 MISS STACEY: No, no, indeed. I thought it was there but I just
9 wanted to check before I said one way or the another.

10 MR. JUSTICE SOOLE: I would like to get hold of those. Have they
11 been sent through to me now?

12 MISS STACEY: They were sent about 20 minutes ago.

13 MR. JUSTICE SOOLE: Direct to me?

14 MISS STACEY: Yes.

15 MR. JUSTICE SOOLE: I am going to rise to get them off my printer
16 so I have them in front of me. Are there lots of attachments
17 or just the orders?

18 MISS STACEY: No, I think it is just the three orders. For these
19 purposes it is the service station order that your Lordship
20 needs.

21 MR. JUSTICE SOOLE: I am going to have them all. It is quickest
22 if I do it myself.

23 MISS STACEY: Indeed.

24 MR. JUSTICE SOOLE: Very well, if you want to discuss any other
25 matters between you in the meantime you can do so. I will be

1 STACEY KC

2 back in about... I will give a knock on the door in about
3 five minutes time, I hope.

4 **(A short break)**

5 MR. JUSTICE SOOLE: So, which one are we looking at?

6 MISS STACEY: We are looking at Johnson J's order.

7 MR. JUSTICE SOOLE: In 1420?

8 MISS STACEY: Yes, paragraph 11 which is, I think, the specific
9 paragraph dealing with other ----

10 MR. JUSTICE SOOLE: This is a petrol station's order?

11 MISS STACEY: Yes. The service starts at paragraph 9, my Lord
12 ----

13 MR. JUSTICE SOOLE: Yes.

14 MISS STACEY: ---- which is the provision that we need to
15 endeavour to put warning notices up by two methods. Paragraph
16 10 relates to service of the order. This is not the document
17 I was just looking at. I am so sorry, my Lord, I do not have
18 a hard copy. I have been given the wrong one. Can I just
19 check this is the one your Lordship has. My Lord, are you
20 looking at the order of ----

21 MR. JUSTICE SOOLE: 17th May 2022.

22 MISS STACEY: No, it is 5th May 2022. It is the order of
23 McGowan J of 5th May 2022, which you have not been sent. I am
24 so sorry, my Lord, this is all a muddle. You should have been
25 provided with these orders. The one you are looking at is

STACEY KC

Johnson J's dated ----

MR. JUSTICE SOOLE: 17th May 2022.

MISS STACEY: Yes. There was an order before that by McGowan J which specifically deals with service of future documents, that needs to be sent to your Lordship and we are going to do that now.

MR. JUSTICE SOOLE: I have another May 2022 order.

MISS STACEY: That will be Bennathan J no doubt.

MR. JUSTICE SOOLE: It does not have any name on it.

MISS STACEY: Is that in relation to Haven and Tower?

MR. JUSTICE SOOLE: That is the Tower order.

MISS STACEY: That would be Bennathan J.

MR. JUSTICE SOOLE: Right. Then I have the Haven order of... Who is that?

MISS STACEY: It is the same date, Bennathan J. He dealt with those two together.

MR. JUSTICE SOOLE: Yes.

MISS STACEY: The one you want is the one, my Lord, which you do not have.

MR. JUSTICE SOOLE: I would like to see that.

MISS STACEY: I can hand it up to you electronically.

MR. JUSTICE SOOLE: All right. (Pause) That was the order of Johnson J. That was a continuation order ----

MISS STACEY: A continuation, indeed.

STACEY KC

MR. JUSTICE SOOLE: ---- hence it refers to petrol stations.

MISS STACEY: Hers is petrol stations, yes.

MR. JUSTICE SOOLE: Hers is paragraph 9.

MISS STACEY: Hers is paragraph 9.

MR. JUSTICE SOOLE: "Documents" with a capital "D".

MISS STACEY: "The claimants" which we are specifically defined as per the first schedule. Those are specific documents but then, my Lord, you have an additional provision ----

MR. JUSTICE SOOLE: I am looking at paragraph 9. Service of this order of the "claim documents" they are called.

MISS STACEY: Those are the documents in Schedule 1. But my Lord can I ask you, before you look at Schedule 1, to look at paragraph 11, "any further documents in these proceedings".

MR. JUSTICE SOOLE: Ah.

MISS STACEY: You will note that those are the same methods, e-mail, uploading with the link ----

MR. JUSTICE SOOLE: Brackets "(other than any defendant who subsequently is named in the proceedings"?

MISS STACEY: Indeed, yes. This is in relation to persons unknown.

MR. JUSTICE SOOLE: Yes. So that is all to do with persons unknown.

MISS STACEY: Yes.

MR. JUSTICE SOOLE: What about anybody else?

1 STACEY KC

2 MISS STACEY: There is no provision for anybody else, my Lord,
3 because at this point in time there is no person identified or
4 sought to be named. But what we have done about that is we
5 are applying for joinder ----

6 MR. JUSTICE SOOLE: Yes, just to pause there. As far as persons
7 unknown for today's application, you can rely on paragraph 11
8 of the order of McGowan J.

9 MISS STACEY: And we have complied with that order: see
10 Ms. Oldfield's fifth witness statement which I can take your
11 Lordship to.

12 MR. JUSTICE SOOLE: Sorry, you are dropping your voice.

13 MISS STACEY: Sorry, the fifth witness statement of
14 Alison Oldfield I can take your Lordship to that.

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: We rely on that ----

17 MR. JUSTICE SOOLE: For today's application you are relying on
18 paragraph 11 of McGowan J's order.

19 MISS STACEY: And page 195 of the bundle is the relevant part of
20 Ms. Oldfield's witness statement which I can take your
21 Lordship to either now or at a convenient moment.

22 MR. JUSTICE SOOLE: Let me write it down. Including ----

23 MISS STACEY: 195 ----

24 MR. JUSTICE SOOLE: No, no, I am just looking at paragraph 11,
25 "... sending it by e-mail to each of the addresses in the

1 STACEY KC

2 Third Schedule or to any person who has previously requested a
3 copy of the claim form."

4 MISS STACEY: My Lord, if I can take you to the relevant evidence

5 ----

6 MR. JUSTICE SOOLE: Not until I have got to the Third Schedule.

7 MISS STACEY: Okay.

8 MR. JUSTICE SOOLE: That is a ----

9 MISS STACEY: It is a long list of e-mail addresses.

10 MR. JUSTICE SOOLE: ---- long list of, as it were, broadly
11 speaking, protestor organisations.

12 MISS STACEY: Indeed. All the e-mail addresses that we have
13 managed to find for all the organisations we have identified.

14 MR. JUSTICE SOOLE: Yes.

15 MISS STACEY: I am in your Lordship's hands but it might be a
16 convenient moment to take you to the relevant evidence.

17 MR. JUSTICE SOOLE: Yes.

18 MISS STACEY: It is the supplemental bundle, my Lord, the witness
19 statement of Alison Oldfield.

20 MR. JUSTICE SOOLE: At page 5 is this?

21 MISS STACEY: Yes, page 195. It starts at 191.

22 MR. JUSTICE SOOLE: Yes.

23 MISS STACEY: Page 192 we can skip over and we will come back to,
24 "Service on named individuals", but we are dealing with
25 persons unknown at the present moment. So if we skip over

1 STACEY KC

2 that and come back to it. Please turn to 195 and the heading:
3 "Service on persons unknown". It refers to paragraph 4 of the
4 order of Hill J setting out the various methods. As we have
5 identified the relevant paragraph, in fact is paragraph 11 of
6 the order of McGowan J.

7 MR. JUSTICE SOOLE: Paragraph 3.16 refers to Hill J 28/4/23
8 paragraph 4, but in fact it is McGowan J.

9 MISS STACEY: Paragraph 11, 5th May 2022.

10 MR. JUSTICE SOOLE: 5/5/22 paragraph 11.

11 MISS STACEY: The methods are listed there.

12 MR. JUSTICE SOOLE: Are those three: (1); (2); and (3) all the
13 same ----

14 MISS STACEY: All the same.

15 MR. JUSTICE SOOLE: ---- as in the McGowan order?

16 MISS STACEY: Indeed, yes.

17 MR. JUSTICE SOOLE: Yes.

18 MISS STACEY: Then 3.17: "In accordance with" -- so paragraph 11
19 -- "the following steps were taken." Then ----

20 MR. JUSTICE SOOLE: Where are you reading from now?

21 MISS STACEY: I am reading at paragraph 3.17 which introduces the
22 evidence.

23 MR. JUSTICE SOOLE: Right.

24 MISS STACEY: 3.18 refers to uploading. 3.19 refers to sending
25 under cover of an e-mail to each of the addresses and there is

1 STACEY KC

2 a table set out on the next page which refers to, in the
3 second column, "Application documents" and the e-mail in the
4 final column having been sent on the 1st May 2024 at 17:21.

5 MR. JUSTICE SOOLE: 1st March.

6 MISS STACEY: Sorry, 1st March.

7 Then at 3.20 there is an analysis of what came back. So
8 here you have the evidence that 16 automatic responses were
9 received in total, seven from the e-mail addresses set out at
10 3.20.1, which are automatic messages, and seven in the next
11 paragraph from listed e-mails because the mailboxes were full.

12 You have an automatic response at 3.23 that the message
13 was too big and one on the last sub-paragraph of that page
14 possibly incorrect. Then over the page, my Lord, apart from
15 those no responses from any other e-mail addresses, no reason
16 to believe that e-mails sent to any of the other 35 e-mail
17 addresses were not delivered, no other bounce back or delivery
18 failure.

19 She concludes at 3.22: "The remaining 35 received the
20 e-mail."

21 MR. JUSTICE SOOLE: Yes.

22 MISS STACEY: At 3.23: "In respect of Youth Climate Swarm ----"

23 MR. JUSTICE SOOLE: That was an address in the McGowan order, was
24 it?

25 MISS STACEY: Yes, it was.

1 STACEY KC

2 MR. JUSTICE SOOLE: Schedule 3?

3 MISS STACEY: Yes, it was. I am just checking it was exactly the
4 same e-mail. (Pause) Yes, it was. That is said at 3.23:
5 "The only e-mail addresses provided and it is within the
6 addresses listed. Do not consider any further steps could
7 have been taken."

8 MR. JUSTICE SOOLE: How should the court approach things like
9 "Mailbox quota exceeded"? Has it still been served, you say?

10 MISS STACEY: It has been served. It has been served in
11 accordance... One has to recognise, of course, there needs to
12 be strict compliance with the methods specified in the order.
13 The question for the court is whether or not the order has
14 been complied with. I suppose, conceivably, it might come to
15 court's attention if there were change in circumstances or
16 other addresses then you might amend an existing order to
17 account for that. We do not have any other addresses, as set
18 out in paragraph 3.23.

19 MR. JUSTICE SOOLE: You say it has been in substance on persons
20 unknown served in accordance with McGowan J's order ----

21 MISS STACEY: Yes.

22 MR. JUSTICE SOOLE: ---- but in any event any order would include
23 an application for permission to vary.

24 MISS STACEY: Indeed. In my skeleton I recognise that the current
25 draft does not include the express provision to vary. We

1 STACEY KC

2 propose that that should be introduced into the draft order.

3 MR. JUSTICE SOOLE: Right.

4 MISS STACEY: As far as service on named persons is concerned,

5 I need not take you to any existing order because there have

6 been no persons yet named. But if we can stick with Ms.

7 Oldfield's statement and turn back to page 192, where she sets

8 out the steps that have been taken.

9 I am getting ahead of myself slightly, my Lord, because

10 I have not told you who the named persons are. It may be

11 first more logical to identify them and then to deal with

12 service on them, which would require me to go back to the

13 joinder application. There is a schedule my Lord in the main

14 hearing bundle behind tab 2 at page 16. Do you have that?

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: You will see that the numbers start at number (2).

17 That is because the first defendant is "Persons Unknown". If

18 you go to the bottom, two pages on ----

19 MR. JUSTICE SOOLE: The two areas are Cobham and Acton; is that

20 right?

21 MISS STACEY: Exactly, yes. You have the Surrey Police and then

22 you have the Met Police.

23 MR. JUSTICE SOOLE: Yes.

24 MISS STACEY: Acton obviously being Met Police and Cobham being

25 Surrey. On this schedule there are 16 numbers but in fact

1 STACEY KC

2 that is 15 people because it starts from number (2).

3 MR. JUSTICE SOOLE: 15 names.

4 MISS STACEY: Then if I could ask you then to turn to page 52
5 behind tab 4.

6 MR. JUSTICE SOOLE: We notice Mr. Gingell there.

7 MISS STACEY: Yes, I will explain to you. At page 52 behind tab 4
8 you will see a coloured schedule. What that does, my Lord, is
9 set out those who have provided undertakings and those who
10 have not. Those who provided undertakings we are not
11 proposing to join, for obvious reasons. They are referred to
12 in the witness evidence and in my skeleton, I think, as "the
13 excluded persons". Those are in green. In relation to the
14 now 14 individuals who have not provided undertakings you will
15 see them there in yellow. What this schedule also does is
16 explain the offence for which those persons were arrested and
17 gives a bit of detail and the date.

18 MR. JUSTICE SOOLE: Alleged offence for which arrested.

19 MISS STACEY: The alleged offence for which they were arrested,
20 quite right. My Lord, if you go back to page 25, which is the
21 third. My Lord, if you go back to page 25 which is the fourth
22 witness statement of Ms. Oldfield, it puts this into context.

23 MR. JUSTICE SOOLE: Just moving on, on page 54 having dealt with
24 various alleged offences, criminal damage and so on, we get to
25 item 23 and thereafter, and they are something called

1 STACEY KC

2 "suspicion of criminal damage".

3 MISS STACEY: Yes, they were arrested, that is the offence for
4 which they are ----

5 MR. JUSTICE SOOLE: Why does the schedule say for some, "Criminal
6 damage to property valued under £5,000" i.e. the language of
7 an offence whereas the later ones, by contrast, say "Suspicion
8 of criminal damage" and "Suspicion of public nuisance"?

9 MISS STACEY: I think the answer to that my Lord is simple. I am
10 told that is how it was characterised by the police. Those
11 who have the detailed, the criminal damage, there was more
12 detail given by the police, whereas the others that level of
13 detail, it was just effectively two different labels that the
14 police provided.

15 If one goes back to Ms. Oldfield's fourth witness
16 statement, she sets out how that schedule was compiled, so
17 back to page 25 if you would, or page 24 is where it starts.
18 3.1: "Pursuant to orders" -- so those are the two orders,
19 13th March and 28th April, those are the third party
20 disclosure orders, my Lord -- "the PS Claimant has undertaken
21 a disclosure exercise ...".

22 Then she summarises at 3.2, the disclosures provided by
23 Surrey on 29th March. At 3.2.3 there is further disclosure on
24 the 31st May. Then you will see the sentence starting,
25 "Access to certain files". There was a problem with the

1 STACEY KC

2 missing information, finally provided on 6th September.

3 Then 3.2.4, third party disclosure in relation to the
4 Met was 28th. Disclosure provided on 31st May, that is 3.2.5.
5 There was clarification over the page sought in relation to
6 status and photographs. That information was provided on the
7 31st August.

8 3.2.6 my Lord: "... 30 individuals identified as having
9 been arrested ..." and then it is the second sentence:
10 "Having reviewed the evidence available, the Claimant reached
11 the conclusion that it would be appropriate to join those
12 individuals ... (save for one individual ... is deceased)."

13 MR. JUSTICE SOOLE: Yes.

14 MISS STACEY: 3.2.7, "reached that conclusion on the basis that"
15 they are persons. They tallied the names against the details
16 given to make sure they were the correct individuals who have
17 been disclosed in the course of the incidents and subsequently
18 to the investigations.

19 That schedule at 3.2.8 is said to have been drawn up by
20 solicitors and includes details of the arrests.

21 So the claimants were keen to ensure they were not
22 simply making an application for the names and addresses on
23 the back of what the police told them. They wanted to carry
24 out their own independent review, to ensure no mistakes in
25 terms of the identification which can happen.

1 STACEY KC

2 MR. JUSTICE SOOLE: You mean there is a review of evidence and
3 then what we see in the box is the result of that, is it?

4 MISS STACEY: Indeed.

5 MR. JUSTICE SOOLE: So from that 30 we subtract one deceased, and
6 14 who have given undertakings?

7 MISS STACEY: 15 sign undertakings, 14 initially and then one from
8 Mr. Gingell which leaves 14. Of those 14 there has been one
9 refusal, my Lord, and you see that at page 107 behind tab 4,
10 from a Ms. Ireland.

11 MR. JUSTICE SOOLE: Page?

12 MISS STACEY: Page 107, Emma Ireland. I should perhaps show your
13 Lordship the undertaking that was proposed, which is at page
14 55.

15 MR. JUSTICE SOOLE: Page 55 is a letter?

16 MISS STACEY: It is the letter. An example is at page 93, this is
17 one example of a signed undertaking. 93.

18 MR. JUSTICE SOOLE: Yes, I got 92 in fact, yes.

19 MISS STACEY: They are all the same. This is consistent with the
20 undertaking in the *National Highways* case that was considered
21 and endorsed by Cotter J, which my Lord you can see in the
22 authorities bundle, it is appended to his judgment.

23 MR. JUSTICE SOOLE: Yes, but what has happened to those
24 undertakings? In the *NHL* case were they embodied in an order?

25 MISS STACEY: They were. It was slightly different in the *NHL*

1 STACEY KC

2 case because they were already parties. What happened in the
3 *NHL* case is ----

4 MR. JUSTICE SOOLE: They were removed.

5 MISS STACEY: Indeed. There was a continuation hearing and one of
6 the issues in the course of that continuation hearing was
7 whether or not one of certain defendants should be moved on
8 the basis of a change in circumstances.

9 MR. JUSTICE SOOLE: Was it attached to an order with a penal
10 notice?

11 MISS STACEY: It was attached to an order with a penal notice.

12 When undertakings were given, my Lord, no. The undertakings
13 were given to the judge in court.

14 MR. JUSTICE SOOLE: All I have ever seen, in either ----

15 MISS STACEY: They were formally recorded.

16 MR. JUSTICE SOOLE: I think I have heard cases in this litigation.
17 I certainly have in *NHL* a number of times. All I have ever
18 seen is something akin to the signed undertakings saying,
19 "I promise to the court".

20 MISS STACEY: Yes.

21 MR. JUSTICE SOOLE: What I have not ever seen is anything embodied
22 in a court order with a penal notice. There may be, I just do
23 not know.

24 MISS STACEY: My Lord, can I get back to you on that? I do not
25 know the answer. I do not think so, but I would need to see

1 STACEY KC

2 an underlying order.

3 MR. JUSTICE SOOLE: I ask it only because it may be relevant today

4 ----

5 MISS STACEY: Indeed.

6 MR. JUSTICE SOOLE: ---- as to what happens to the 14 people in

7 question: in a sense in one sense nothing because you are not

8 asking to join them, but ----

9 MISS STACEY: That is right. In Cotter J's judgment is in an

10 annex and there is a signature and a date so that forms part

11 of his judgment. The undertakings given are referred to

12 rather by way of an example. A signed undertaking would need

13 to be given.

14 MR. JUSTICE SOOLE: How is that enforced?

15 MISS STACEY: My Lord, exactly. That would not in and of itself

16 be enforceable. What I am wondering is whether that

17 subsequently made its way into an order. I do not think so

18 but I need to check the position. I do not think so for two

19 reasons: (i) there is nothing in the judgment to suggest that;

20 and (ii) they were being dropped as defendants on the basis

21 that they provided a promise to the court.

22 MR. JUSTICE SOOLE: I do not have any draft order in the moment on

23 those terms.

24 MISS STACEY: No, and I am not seeking that you make any reference

25 to those excluded persons today. We are content with the

STACEY KC

undertakings that have be provided.

MR. JUSTICE SOOLE: Yes.

MISS STACEY: The named individuals who are set out in the schedule in green, my Lord, are those who have not provided undertakings. I referred you to you Ms. Ireland who refused positively. In relation to the other 13, no responses have been received.

That brings me, I think, back to service, just to satisfy your Lordship that they have been properly served, all documents have been sent to them.

MR. JUSTICE SOOLE: Service of the application.

MISS STACEY: Indeed, yes. Back to Ms. Oldfield's fifth witness statement in the supplemental bundle if you would.

MR. JUSTICE SOOLE: Yes.

MISS STACEY: At page 192, she attaches a spreadsheet setting out the names of 15 individuals. That includes Mr. Gingell, but he has subsequently given an undertaking ----

MR. JUSTICE SOOLE: Are we looking at page ----

MISS STACEY: 19, my Lord.

MR. JUSTICE SOOLE: No, the spreadsheet at page 205?

MISS STACEY: Yes. The names, I note, have come off on the left-hand column. I have some hard copies, just so we are clear who we are dealing with. *(Same handed)*

MR. JUSTICE SOOLE: Thank you.

1 STACEY KC

2 MISS STACEY: They are paginated so my Lord you can simply
3 substitute those for the existing version.

4 MR. LAURIE: Is it possible I can see this? I do not think I have
5 this.

6 MR. JUSTICE SOOLE: Yes, make sure Mr. Laurie has this.

7 MISS STACEY: Of course.

8 That schedule, my Lord, is the... No, that is not the
9 schedule we are talking about. 205, my Lord, is the page
10 number.

11 MR. JUSTICE SOOLE: The schedule I think starts Louis McKechnie.

12 MISS STACEY: Indeed. That is at page 205. So if I can ask you
13 to keep a finger in that and go back to Ms. Oldfield's witness
14 statement. She describes that as a "spreadsheet" setting out
15 the names of the 15 then individuals in respect of whom form
16 the subject of the application. Then she at 3.2 refers to the
17 fact that on 2nd March, Saturday, copies of the following
18 documents were sent by First Class Post and Special Delivery.
19 There is a list of documents there which are defined as the
20 "application documents".

21 MR. JUSTICE SOOLE: Because nothing had been sent at the time when
22 the application was lodged on 13th February ----

23 MISS STACEY: No.

24 MR. JUSTICE SOOLE: ---- which resulted in the order of Fordham J
25 on 14th, which was all without notice.

1 STACEY KC

2 MISS STACEY: Indeed, that was all without notice, yes. The
3 reason for that, my Lord, is we were waiting to hear back, so
4 we did not really know what the current status was in relation
5 to certain individuals. We wanted to have a copy of the order
6 that noticed the hearing so that could then be sent as part of
7 the package of documents to the individuals.

8 MR. JUSTICE SOOLE: There is a notice of hearing the 29th
9 February.

10 MISS STACEY: Yes, and on the 2nd March then the application
11 documents were sent by First Class Post and Special Delivery.

12 MR. JUSTICE SOOLE: What happened thereafter, there was a change
13 in the hearing date?

14 MISS STACEY: No. *(Pause while instructions were received)* I am
15 told that the notice of hearing consists of an e-mail from the
16 court telling us of the date of this particular hearing,
17 today's hearing.

18 MR. JUSTICE SOOLE: Yes. I am just saying that on paragraph 3.2
19 the documents that are sent to the named defendants include a
20 notice of hearing, sorry, dated the 9th. Forgive me.

21 MISS STACEY: Yes. That in fact, my Lord, was an e-mail telling
22 us that the hearing ----

23 MR. JUSTICE SOOLE: Which includes today's date, yes, of course.

24 MISS STACEY: Yes.

25 MR. JUSTICE SOOLE: I understand with today's date, yes.

1 STACEY KC

2 MISS STACEY: Yes, I see. There was no hearing on 29th ----

3 MR. JUSTICE SOOLE: No, no, I thought that was one of those things
4 where a date had been given and it had to be changed for some
5 court reason. I understand it says "dated", it means the
6 notice is dated.

7 MISS STACEY: Yes. Those are the application documents. At 3.3
8 they were sent to the named individuals using the addresses
9 provided by Surrey and the Met.

10 In her fourth witness statement she sets out in detail
11 the process. We have gone over that in terms of how that
12 information was provided by the Met and then analysed. She
13 then says at 3.4 that she was informed by a colleague when
14 ----

15 MR. JUSTICE SOOLE: Pause a moment, while I will go back to that.
16 Yes. I am just reminding myself the McGowan order said in
17 paragraph 11 "not to extend to named defendants".

18 MISS STACEY: "Not to extend" which is self-explanatory, I think,
19 my Lord, because at the time... One does not anticipate.
20 When one seeks to join named defendants one has to make an
21 application for joinder and deal with service at that point in
22 time.

23 MR. JUSTICE SOOLE: I suppose you might have an order saying in
24 the event that someone wishes to join a named defendant, a
25 defendant shall be named and you serve the application notice

1 STACEY KC

2 on the last address.

3 MISS STACEY: That would be a way of dealing with it, yes. It
4 would accelerate things no doubt. That did not happen in this
5 case.

6 3.4, if you still have the statement open, "Colleague
7 Bethany (*indistinct*) Taylor visited the Post Office and left
8 packages. That is her doing the act of service. At 3.5 she
9 was informed by Taylor and believed on 2nd March she completed
10 the necessary paperwork and submitted them, Special Delivery.
11 That is 3.4 is the First Class Post, 3.5 is Special Delivery.
12 3.6 refers to a Special Delivery Postal Tracker, which my Lord
13 you will see at page 8. It is a schedule on its side with a
14 column, on the right-hand side with green ----

15 MR. JUSTICE SOOLE: Page 208.

16 MISS STACEY: 208.

17 MR. JUSTICE SOOLE: That is one which has, "Louis McKechnie:
18 Yes"?

19 MISS STACEY: Yes.

20 MR. JUSTICE SOOLE: "Louise Harris: No. Return to sender".

21 MISS STACEY: Yes. This is the postal tracker which confirms
22 whether or not they were successfully delivered and signed
23 for. The green are "Yes" and the pink are "No". The "No"
24 totals eight individuals. I am sorry, eight individuals were
25 indeed successfully served, that is green.

1 STACEY KC

2 MR. JUSTICE SOOLE: We see over the page, Mr. Laurie.

3 MISS STACEY: That includes Mr. Laurie.

4 Then at 3.8 my Lord, she goes on in her witness
5 statement to say: "In respect of the seven named individuals
6 where we have not received confirmation, further hard copies
7 of the application documents were sent by hand" and there ----

8 MR. JUSTICE SOOLE: What does "sent by hand" mean?

9 MISS STACEY: Sent by process server who delivered the documents
10 by hand.

11 MR. JUSTICE SOOLE: What, to a person or to an address?

12 MISS STACEY: To an address at the last known address provided by
13 the police.

14 MR. JUSTICE SOOLE: Were not postal service, a process... Let us
15 ----

16 MISS STACEY: You see an example of a photograph at 2.10.

17 MR. JUSTICE SOOLE: No, no, before we get there. Is that in
18 respect of "No: Return to sender" or "No"? Because "No:
19 Return to sender" rather implies someone is at the property.

20 MISS STACEY: It is in relation to all the pinks.

21 MR. JUSTICE SOOLE: All the pinks.

22 MISS STACEY: Yes.

23 MR. JUSTICE SOOLE: So ----

24 MISS STACEY: We go on: "In relation to 'No: Return to sender'
25 ..." My Lord, I am going to come on to those. They are the

1 STACEY KC

2 ones who form the subject of the alternative service
3 application that is before your Lordship today.

4 Louise Harris, you will see, is one of those.

5 MR. JUSTICE SOOLE: Louise Harris.

6 MISS STACEY: And then Tessa-Marie Burns is the other. Those are
7 the two individuals for whom we have been able to get social
8 media accounts and we have served them. Later in the
9 statement Ms. Oldfield deals with this at a Facebook account
10 and a LinkedIn account. I will come on to that in a moment.

11 My Lord, while we are on this schedule with the green
12 and the pink ----

13 MR. JUSTICE SOOLE: Tez Burns was in this court last week in
14 respect of ----

15 MISS STACEY: Right. She is one of the one whose stuck herself
16 outside the Royal Courts of Justice.

17 MR. JUSTICE SOOLE: Yes.

18 MISS STACEY: My Lord, while we have this schedule open at page
19 208 I should (and I will come on this) draw your attention to
20 the fact that the second one down, Samuel Holland, in respect
21 of which it is said "Yes", we have subsequently discovered
22 that he was living in a student accommodation and he no longer
23 resides at that address. So the "Yes" in fact should be a
24 "No" or at least it was delivered to the address but it has
25 come to our attention that he no longer resides there. On

1 STACEY KC

2 that basis it would not have come to his attention. That is
3 all explained in the statement. If I could ask you to refer
4 back to 193, so back at 3.6 that was the postal tracker we
5 have just been looking at, the schedule with the pink and the
6 green. At 3.8 it says: "In the case of the seven named who
7 were in the pink, documents were sent by hand, by a process
8 server delivered by hand."

9 MR. JUSTICE SOOLE: Sorry, I just want to go back a bit. *(Pause)*

10 MISS STACEY: My Lord, I think that is in relation to personal
11 service.

12 MR. JUSTICE SOOLE: 3.7 makes a reference to 6.2.6.

13 MISS STACEY: Yes. My Lord, I think that is the debate we were
14 having earlier.

15 MR. JUSTICE SOOLE: I think that was a misunderstanding. If there
16 has been permission to serve by those, that gives the dates of
17 deemed service. It does not provide if you do it by post it
18 is deemed service.

19 MISS STACEY: Which is why I skipped over to that.

20 MR. JUSTICE SOOLE: I need to know; not relied on.

21 MISS STACEY: No. So in relation to the seven who were a "No", if
22 you like, there was an additional step taken, namely, service
23 by hands. My Lord you see some photographs at page 210
24 onwards in the bundles.

25 MR. JUSTICE SOOLE: It says: "Hand delivered to all the named

1 STACEY KC

2 individuals"; but it is the addresses, is it not?

3 MISS STACEY: To all the addresses, indeed, yes.

4 MR. JUSTICE SOOLE: Sent by hand.

5 MISS STACEY: "Served by hand" I think more accurately.

6 MR. JUSTICE SOOLE: 3.9?

7 MISS STACEY: 3.9. The only individuals it was not possible to
8 verify service, either by Special Delivery or by hand, in the
9 sense that the documents were taken in, were Louise Harris and
10 Samuel Holland. As regards Samuel Holland you will see there
11 the explanation, "We have been informed by the process server
12 that he has moved." We do not have any social media or
13 alternative means of serving him. We say that the alternative
14 service that would be applicable to persons unknown covers him
15 and documents have, as you will have seen, been served in that
16 manner. It is difficult to see what else we could do in
17 circumstances where we have got an address and carried out
18 some searches of social media and we have not been able to
19 find anything else for him.

20 In relation to over the page at ----

21 MR. JUSTICE SOOLE: Then you are asking the court to deem service
22 by First Class Post as good service?

23 MISS STACEY: I think, my Lord, I am asking you in fact to endorse
24 the methods of service that have been undertaken, which
25 includes those on persons unknown and the attempts to made to

1 STACEY KC

2 serve at his last known address as good service.

3 MR. JUSTICE SOOLE: I do not think it... We are looking at 6...

4 (Pause) In his case, you are not asking to rely on that postal
5 address any more?

6 MISS STACEY: No.

7 MR. JUSTICE SOOLE: Because it could not be said that it would be
8 reasonably expected to come to his attention.

9 MISS STACEY: Indeed, but the pre-existing methods of service that
10 were endorsed by McGowan J have been complied with, we say are
11 steps which, given the history of this protest, can be
12 reasonably likely to bring the documents to his attention.
13 There are no other steps that we can identify that we could
14 take in order to do so.

15 MR. JUSTICE SOOLE: Because in the circumstance there is no
16 different reason to put him in a different category from
17 persons unknown?

18 MISS STACEY: In these circumstances, yes. He falls within the
19 description of persons unknown. He is being joined on that
20 basis. We say it is to joinder and there is no reason to put
21 him in a different category to general persons unknown.

22 MR. JUSTICE SOOLE: Right.

23 MISS STACEY: The basis for the alternative service in respect of
24 persons unknown is precisely because we identify the methods
25 by which it can be said to be likely to bring the documents to

1 STACEY KC

2 their attention. That applies equally to Mr. Holland.

3 Ordinarily we accept in an ideal world we will be serving him
4 at an address.

5 MR. JUSTICE SOOLE: The point is that has already been done.

6 MISS STACEY: That has been done, yes. We have made the efforts.

7 We have also, as you will see from ----

8 MR. JUSTICE SOOLE: Has it been done in the sense of referring...

9 Is it because it has included his name?

10 MISS STACEY: Absolutely. All the letters included the names and
11 were sent specifically to the individuals so the packages had
12 the names of the individuals on them.

13 MR. JUSTICE SOOLE: No, but that which has been sent to the
14 generic e-mail addresses will include his name amongst others?

15 MISS STACEY: Will include his ----

16 MR. JUSTICE SOOLE: Will have included?

17 MISS STACEY: May I just turn my back? *(Pause while instructions*
18 *were received)* To date, no, because up until now we have not
19 included persons names because of data protection. *(Pause*
20 *while instructions were received)* It would have included his
21 name.

22 MR. JUSTICE SOOLE: So the application is unredacted?

23 MISS STACEY: The addresses are redacted but the names are not.

24 MR. JUSTICE SOOLE: The names are not. So the application sent to
25 the addresses permitted by McGowan J paragraph 11 includes the

1 STACEY KC

2 names but not the addresses ----

3 MISS STACEY: Yes.

4 MR. JUSTICE SOOLE: Of those for which the application is to join.

5 MISS STACEY: Yes.

6 MR. JUSTICE SOOLE: And therefore Mr. Holland?

7 MISS STACEY: And therefore Mr. Holland.

8 MR. JUSTICE SOOLE: Right.

9 MISS STACEY: Ms. Oldfield explains in her fourth witness

10 statement that she has no other contact details for him. That
11 is page 27 of the hearing bundle. That is Mr. Holland, my
12 Lord.

13 In relation to 3.11 on page 194 in relation to
14 Louise Harris and Tez Burns ----

15 MR. JUSTICE SOOLE: There are three people who ----

16 MISS STACEY: There are three people. There were initially two,
17 but the problem came to light in relation to Mr. Holland. So
18 Louise Harris and Tez Burns, Ms. Oldfield explains that they
19 have managed to identify a number of social media accounts.
20 In paragraph 3.11 on the 5th March a message was sent to both
21 of them which read, and you will see the extract there at
22 3.11, referring to the fact they had not received an
23 undertaking and that the application had been made and so
24 forth, then enclosing application documents, orders and the
25 hearing bundle.

1 STACEY KC

2 Then at 3.12, my Lord, it is said that the message was
3 sent to Ms. Harris via her Facebook account, and Ms. Burns via
4 her LinkedIn account. I am told that we subsequently tried to
5 serve Ms. Burns with the supplemental bundle at the LinkedIn
6 account but that has not proven possible because apparently,
7 my Lord, they sent the first message by a link but in order to
8 get subsequent messages Ms. Burns has specifically to connect.
9 You can send one but you cannot follow up unless there is
10 active engagement on the part of the person who holds the
11 account. She had all the documents that are listed there at
12 3.11, she has not had the supplemental bundle.

13 So far as Ms. Harris is concerned, at the moment the
14 Facebook account works. Our concern is that insofar as the
15 court is prepared to endorse this, we can use reasonable
16 endeavors but we can not guarantee that those methods are
17 going to work because they could always block the messages.
18 We might when we get to it, if we get to it, tweak the draft
19 order to reflect that.

20 MR. JUSTICE SOOLE: Yes.

21 MISS STACEY: Then 3.13 therefore we say we have taken the service
22 using the Facebook account and the LinkedIn account
23 constitutes valid service in respect of the application
24 documents that have been served to date. I suppose that this
25 is back to my point about tweaking the order if we get there,

1 STACEY KC

2 but it may be that insofar as further documents are going to
3 be served we use reasonable efforts or we endeavour to serve
4 at those accounts.

5 I should also say, my Lord, the draft order -- and I do
6 not want to get ahead of myself -- in this section of the
7 draft order we list three different social accounts for
8 Ms. Harris, being the three that we managed to identify. We
9 are not proposing that we have to serve all three because I am
10 told that in order to serve at LinkedIn you have to pay a
11 monthly fee. We have managed with Facebook and that should be
12 sufficient for these purposes. Again we might have to tweak
13 the order, if we get there, to make it clear that it is the
14 specific account which we attempted to serve out and we
15 imagined to have some success with.

16 MR. JUSTICE SOOLE: We will need to come back to that. I am not
17 sure I entirely followed that.

18 MISS STACEY: Yes, we will come back to that, it is a point of
19 detail.

20 Then my Lord at 197 just to complete the picture,
21 I skipped over "persons unknown" because we have dealt with
22 that. Can I ask you to go forward two pages to page 197?

23 MR. JUSTICE SOOLE: Yes, I am there.

24 MISS STACEY: Which here is the service of the hearing bundle on
25 both named individuals and on persons unknown. 3.2.6 that was

1 STACEY KC

2 served on 5th March as part of the package of documents, if
3 you like, that we have already covered.

4 MR. JUSTICE SOOLE: I think that sounds as if that should read
5 "paragraph 11 of the McGowan order".

6 MISS STACEY: Yes. Then 3.2.9 over the page, my Lord, for
7 completeness, in accordance with the order, they are also sent
8 to the following other addresses.

9 MR. JUSTICE SOOLE: You say in accordance with ----

10 MISS STACEY: The reason it says "for completeness" in fact, it is
11 not strictly, is because some of these firms have indicated it
12 was not clear whether they still wished to be served with
13 documents, but it has been done regardless and all those
14 persons who have expressed an interest in the past of
15 receiving documents have indeed been served.

16 You then have Mr. Gingell at 4.1. He has signed an
17 undertaking now. There is a section about ongoing risk, but
18 that is simply to alert the court to the fact that this has
19 not gone away and we will need to pursue it. It is just
20 simply to alert the court to the fact that I do not expect you
21 to do anything with ongoing risks today; it simply forms part,
22 we say, of the relevant factual -----

23 MR. JUSTICE SOOLE: You say there is an ongoing risk that would
24 justify bot a continuing interim precautionary injunction and
25 a final precautionary injunction.

1 STACEY KC

2 MISS STACEY: My Lord, yes. We will come on to directions.

3 I noted your indication that you do not conceive of a scenario
4 where we can get our final hearing in before the 12th May.

5 MR. JUSTICE SOOLE: It just seemed to me... Have the particulars
6 of claim been served?

7 MISS STACEY: Yes.

8 MR. JUSTICE SOOLE: The particulars?

9 MISS STACEY: The particulars of claim have been ----

10 MR. JUSTICE SOOLE: Served in respect of named defendants?

11 MISS STACEY: In respect of named defendants, no. That would need
12 to be an additional step. You are quite right, my Lord, they
13 have not, no.

14 MR. JUSTICE SOOLE: That would have to be served setting out the
15 ----

16 MISS STACEY: Yes, there would need to be a step for defences.

17 MR. JUSTICE SOOLE: Acknowledgment of service and defences.

18 MISS STACEY: And defences. Then, fairly rapidly thereafter we
19 say... We are mindful of what the Supreme Court said in
20 *Wolverhampton* which is that claims of this nature, there is
21 rarely a trial in the strict formulation of ----

22 MR. JUSTICE SOOLE: One can read perhaps too much into that.

23 I looked at paragraph 137: "... there is scarcely ever a
24 trial in proceedings of the present kind, or even
25 adversarial argument ..."

1 STACEY KC

2 MISS STACEY: That is right.

3 MR. JUSTICE SOOLE: It does mean that that therefore one can just

4 ----

5 MISS STACEY: No, no it does not simply mean one can simply

6 shoehorn it into every ----

7 MR. JUSTICE SOOLE: ---- shoehorn it into a very short period of

8 time, for any trial up to -- I do not know how -- let us say

9 it was a trial up to three days.

10 MISS STACEY: It is one and a half at the moment, that is what

11 Hill J ----

12 MR. JUSTICE SOOLE: If we are looking at the published trial

13 windows, the next trial window is 13th January to 16th April

14 2025.

15 MISS STACEY: My Lord, we are where we are. The court has

16 confirmed there is not much difference between entering the

17 final in any event. What we are concerned about doing is

18 giving the court the impression that we are simply seeking a

19 series of renewed interim injunctions.

20 MR. JUSTICE SOOLE: I understand that, that was against the

21 concern, that there was ever bringing anything to trial.

22 MISS STACEY: Indeed, and facing criticism on that basis. Whilst

23 I recognise that we are tight on time, I am trying to square

24 that with the obligations we had to go through, the fact that

25 it is taking rather longer, the fact that *Wolverhampton* was

1 STACEY KC

2 outstanding. We did not get judgment ----

3 MR. JUSTICE SOOLE: Until the end of November.

4 MISS STACEY: We have the 12th May as the deadline. What I do not
5 want to do is to go before a judge and get a refusal on the
6 basis that we have not progressed things and therefore,
7 seeking an interim injunction in circumstances where we ought
8 to have brought the matter to a final hearing more rapidly.

9 It is open to us to bring an application for summary
10 judgment, but in order to do that we still need the defences
11 to come through before we can take a view about that, because
12 we cannot pre-empt ----

13 MR. JUSTICE SOOLE: People sometimes do, do they not, but you know
14 ----

15 MISS STACEY: On the back of the point I was making about there
16 rarely being any adversarial argument and the court has
17 already subjected this order to ----

18 MR. JUSTICE SOOLE: You cannot do that until you have
19 acknowledgment of service ----

20 MISS STACEY: Yes, indeed.

21 MR. JUSTICE SOOLE: ---- under Part 24; is that right?

22 MISS STACEY: We need the court's permission to do so when there
23 has been no defence. What happens is it is only persons
24 unknown who need the court's permission in circumstances where
25 there has been no defence, so that would apply equally.

1 STACEY KC

2 MR. JUSTICE SOOLE: We are getting deep into procedure and I am
3 conscious of Mr. Laurie's presumed unfamiliarity with these
4 things, but we have to talk, I am afraid, in these rather
5 procedural details, Mr. Laurie. You will have a chance to
6 talk on ----

7 MR. LAURIE: You live and learn. I am living and learning at the
8 moment.

9 MR. JUSTICE SOOLE: ---- the substantial matters as we move along.

10 MISS STACEY: The point, my Lord, will be clear: when we get to
11 directions you obviously have to come up with a timetable that
12 makes sense.

13 MR. JUSTICE SOOLE: Yes.

14 MISS STACEY: But at the same time ----

15 MR. JUSTICE SOOLE: I thought that my own view was that I
16 cannot... I did not think I had seen anything about service
17 of particulars of claim.

18 MISS STACEY: Your Lordship is quite right, that needs to be
19 inserted.

20 MR. JUSTICE SOOLE: It seems to me the prospect of getting... and
21 why should there be a final hearing so soon.

22 MISS STACEY: It is simply for that reason. It is simply in order
23 to... I suppose there are two options. We either seek a
24 short continuation in circumstances where we are getting
25 summary judgment application up to speed, I think that is what

1 STACEY KC

2 happened in *National Highways*, where there was a short
3 continuation granted by Johnson J; or we simply have a one
4 year renewal and take... There are different ways of dealing
5 with this. We were rather hoping when we issued the
6 application that we could squeeze in but it may be that is
7 overly-ambitious.

8 MR. JUSTICE SOOLE: I am thinking of the defendants. You have 14
9 on your application, 14 new defendants -- do I mean 14;
10 anyhow I think it is 14 -- to be joined and they are supposed
11 to get everything ready in shape within six weeks or something
12 for a trial. I mean, it is one thing to say there are seldom
13 trials but sometimes people have points they want to raise and
14 they are entitled to proper time to do that. I understand you
15 are saying you are doing it to avoid criticism that it has not
16 been done.

17 MISS STACEY: And also in anticipation that if they are given say,
18 a 14-day or a 28-day period to put the defences in, we look at
19 those and we can get up to speed pretty rapidly. The onus is
20 on us to do so. Your point about service, I would take on
21 board, my Lord, and that would extend the timetable further.
22 It is tight, I recognise that.

23 MR. JUSTICE SOOLE: It seems to me my provisional view on reading
24 the papers was that you needed to have another hearing in
25 April for an interim injunction ----

1 STACEY KC

2 MISS STACEY: Yes.

3 MR. JUSTICE SOOLE: ---- at which point there would be directions
4 for trial. When I say "directions for trial", I mean there
5 might potentially be some directions today but there would be
6 probably supplementary directions at that stage.

7 MISS STACEY: That would do it. We just simply want to keep the
8 matter moving forward but against the concerns that I have
9 identified.

10 The only other point, I candidly have to mention this,
11 but it may not make any difference, is that every time there
12 is another hearing and another order we have to serve at all
13 stations nationwide, replace the warning notices and that is a
14 process that is not straightforward. Therefore the hope was
15 that we would have one final hearing with one further order
16 and therefore only one further rounds of such activity.

17 MR. JUSTICE SOOLE: I mean, one always bears in mind
18 practicalities, but this is litigation against a large number
19 of people and I think, as I have said in other cases like
20 this, the consequence of that is that the claimants have a lot
21 of work to do. It does not necessarily mean one can just cut
22 out steps that would otherwise be taken if there was only, as
23 it were, if it were a Travellers case with just one site.

24 MISS STACEY: Indeed.

25 MR. JUSTICE SOOLE: That is one of the consequences of taking

1 STACEY KC

2 litigation on a wide scale. I understand why it is done, but

3 I do not think one can give too much account to ----

4 MISS STACEY: Which is why I say it may not make much difference.

5 MR. JUSTICE SOOLE: You make it in passing.

6 MISS STACEY: I have followed the application in the order that I
7 was planning on taking.

8 MR. JUSTICE SOOLE: No, because I have interrupted you.

9 MISS STACEY: In terms of directions I can get to those when we
10 get to it. We can go ----

11 MR. JUSTICE SOOLE: In some ways going through directions is quite
12 a good way of, as it were, arguing the points and seeing how
13 they fit into make sure who has complied with what.

14 MISS STACEY: Yes. I think, my Lord, what I need from you is a
15 ruling on the joinder point because then we know whether we
16 are dealing with directions on the basis of joinder or no
17 joinder. You can see from my skeleton argument that if you
18 were against me on joinder then I would be asking for a set of
19 directions proceeding against persons unknown.

20 MR. JUSTICE SOOLE: Yes, I think the best thing is to look at the
21 whole thing in the round and go through it.

22 MISS STACEY: Yes.

23 MR. JUSTICE SOOLE: Yes.

24 MISS STACEY: Shall I take you to the order?

25 MR. JUSTICE SOOLE: I think that would be the right court to case.

1 STACEY KC

2 MISS STACEY: It is behind tab 2.

3 MR. JUSTICE SOOLE: Do you want to say something Mr. Laurie?

4 MR. LAURIE: Can I go to the loo please?

5 MR. JUSTICE SOOLE: Yes, of course. I will rise for five minutes.

6 **(A short break)**

7 MISS STACEY: The draft order is behind tab 2 on page 10 of the
8 hearing bundle. Page 9 is the front sheet and you will see
9 there it lists the proposed named defendants. Turning to the
10 substantive order ----

11 MR. JUSTICE SOOLE: That is the front of the order, is it not?

12 MISS STACEY: It is the front of the order.

13 MR. JUSTICE SOOLE: So we would cross out "proposed", would we
14 not, if they were joined?

15 MISS STACEY: We would. You have the recitals on page 10.

16 MR. JUSTICE SOOLE: Where it says Stephen Gingell that would come
17 out?

18 MISS STACEY: He would need to come out.

19 MR. JUSTICE SOOLE: So Margaret Reid would become the 13th?

20 MISS STACEY: Yes.

21 MR. JUSTICE SOOLE: Nixon the 14th.

22 MISS STACEY: 14th and 15th.

23 MR. JUSTICE SOOLE: "Proposed" would come out, "draft" would come
24 out.

25 MISS STACEY: Yes.

1 STACEY KC

2 MR. JUSTICE SOOLE: The recital would need to include at least the
3 order of ----

4 MISS STACEY: McGowan J, yes. But it could actually include the
5 subsequent order. I suggest it should just refer to McGowan J
6 when that order preceded Johnson J's or perhaps all three,
7 McGowan J, Johnson J, not the Bennathan J one because they are
8 not relevant to any point I am asking you. It is only in
9 relation to stations; so McGowan J and Johnson J.

10 MR. JUSTICE SOOLE: Yes. The Hill J orders are then divided
11 between the different ----

12 MISS STACEY: My Lord, you have been given all four orders now,
13 you have seen them. We could include in the recital a
14 reference to all four and ----

15 MR. JUSTICE SOOLE: Which all four?

16 MISS STACEY: The two Bennathan J orders.

17 MR. JUSTICE SOOLE: No, just the present recital takes the Hill
18 orders and divide them into descriptions as "Shell Petrol
19 Stations Injunction Order".

20 MISS STACEY: It does.

21 MR. JUSTICE SOOLE: That is going to need revision, is it not, if
22 it is going to refer to the orders of McGowan J and Johnson J?

23 MISS STACEY: It could simply say, "The order", singular, "of
24 Hill J dated 23rd May", but the definitions can stay because
25 they are the three claims together. You can take out the

1 STACEY KC

2 words "together" and just say the "Hill J order".

3 MR. JUSTICE SOOLE: How many orders are there?

4 MISS STACEY: There is one order dated 23rd May. There is simply
5 one order, which deals with ----

6 MR. JUSTICE SOOLE: So when it says "orders", that is wrong, is
7 it?

8 MISS STACEY: No, there are. Sorry, I am just getting mixed up.
9 There are three orders, yes.

10 MR. JUSTICE SOOLE: Yes.

11 MISS STACEY: There are. We can just break it down into the
12 different orders for the different claims, my Lord.

13 MR. JUSTICE SOOLE: At the moment we need to have, it seems to me,
14 I mean we cannot draft and commit it ----

15 MISS STACEY: No, no.

16 MR. JUSTICE SOOLE: ---- but you need to have the McGowan order
17 because of the provision in paragraph 11.

18 MISS STACEY: Yes.

19 MR. JUSTICE SOOLE: It makes sense to have the Johnson order as
20 well because that followed on from it.

21 MISS STACEY: Indeed.

22 MR. JUSTICE SOOLE: How you describe those orders I will leave to
23 you, but that will have to be changed the whole way through.

24 MISS STACEY: That is fine. So McGowan, Johnson and the three
25 Hills. I will amend the drafting to reflect that and change

1 STACEY KC

2 the definition to make sure it tracks through.

3 I think the second recital can stand.

4 MR. JUSTICE SOOLE: You are wanting a trial just in the petrol
5 stations; is that right?

6 MISS STACEY: No, we are wanting a trial... They have been
7 consolidated, all three claims, and it makes sense to keep
8 them such, because there is a great degree of overlap between
9 the evidence.

10 MR. JUSTICE SOOLE: Yes, fine.

11 MISS STACEY: So, no, we are proposing to keep all three running
12 together.

13 MR. JUSTICE SOOLE: Why does it have, "... of QB-2022 ----"

14 MISS STACEY: Because the joinder relates only to petrol stations,
15 so that is ----

16 MR. JUSTICE SOOLE: Yes, that is...

17 MISS STACEY: The purpose of that recital is to alert the court to
18 the fact that we have identified persons in relation to that
19 particular claim.

20 MR. JUSTICE SOOLE: Yes, I see.

21 MISS STACEY: It might be unnecessary as a recital because the
22 directions speak for themselves.

23 MR. JUSTICE SOOLE: You refer to the "application documents".
24 They are referred to below, are they? Yes.

25 MISS STACEY: It may be, my Lord, that you think Recital 2 can

1 STACEY KC

2 come out or simply read: "Upon the Claimant having identified
3 persons who should be ----"

4 MR. JUSTICE SOOLE: I prefer not to have too much narrative in
5 recitals.

6 MISS STACEY: Yes.

7 MR. JUSTICE SOOLE: All one needs to have, "Upon" ----

8 MISS STACEY: "Upon".

9 MR. JUSTICE SOOLE: ---- I do not think one needs the word
10 "reading", "Upon the Claimants application dated 12th February
11 2024 for ----"

12 MISS STACEY: Fine.

13 MR. JUSTICE SOOLE: Service of the application, pursuant to CPR
14 ----

15 MISS STACEY: That goes.

16 MR. JUSTICE SOOLE: What are you asking for in there now?

17 MISS STACEY: I do not think, my Lord, I am asking for anything
18 specifically. We need joinder. I suppose I am asking under
19 6.15(2) an order that the steps already taken to serve the
20 persons who are to be joined as named defendants are
21 sufficient steps.

22 6.15 relates obviously to the claim form, my Lord, but
23 6.27 makes that rule applicable in relation to other
24 documents.

25 MR. JUSTICE SOOLE: Yes.

1 STACEY KC

2 MISS STACEY: I am asking the court to endorse the steps that have
3 been taken to serve the application documents, the hearing
4 bundle, supplemental bundle hearing bundle on the named
5 defendants as set out in Ms. Oldfield's fifth witness
6 statement.

7 MR. JUSTICE SOOLE: Sorry, can you repeat that?

8 MISS STACEY: I am asking the court to order that the steps taken
9 as set out in Ms. Oldfield's fifth witness statement ----

10 MR. JUSTICE SOOLE: Are good service of the application?

11 MISS STACEY: ---- are good service of the application documents
12 on the named defendants. Obviously the claim form, the
13 particulars of claim, will need to be served separately.

14 MR. JUSTICE SOOLE: And in respect of Mr. Holland ----

15 MISS STACEY: In respect of Mr. Holland, I am asking the court to
16 order that service pursuant to paragraph 11 of McGowan J's
17 order is good service.

18 MR. JUSTICE SOOLE: Right.

19 MISS STACEY: The same, my Lord, might apply to Ms. Holland and
20 Ms. Burns. We are simply trying to add social media accounts
21 in order to maximise the prospects.

22 MR. JUSTICE SOOLE: The reason I am pausing on this recital is
23 because what you are seeking is not reflected in the order.

24 MISS STACEY: No, I recognise that.

25 MR. JUSTICE SOOLE: I think it may be simpler to say: "And upon

1 STACEY KC

2 the claimants' application dated 12th February 2024" and stop
3 there.

4 MISS STACEY: Full stop. Right. Paragraph 1 deals with the
5 joinder.

6 MR. JUSTICE SOOLE: Is it not logical to have the question of
7 service dealt with before you have the joinder?

8 MISS STACEY: Yes, but it is simply because once one knows who was
9 being joined... For example, my Lord, if you were against us
10 on joinder, if there were no named defendants ----

11 MR. JUSTICE SOOLE: One might be against them on joinder because
12 they had not been served.

13 MISS STACEY: That is true. But if no one is going to be joined
14 we would not need necessarily to change any service
15 provisions. That is why it has been dealt with the way it
16 has, but, my Lord, I am in your hands.

17 MR. JUSTICE SOOLE: Let us leave it there for the moment.

18 You need to amend that, do you not, you say the persons
19 named in Schedule 1.

20 MISS STACEY: Yes, so Schedule 1 needs to be amended to remove
21 Mr. Gingell, number 13.

22 MR. JUSTICE SOOLE: So you would put in a new Schedule 1; yes.

23 MISS STACEY: Yes.

24 MR. JUSTICE SOOLE: "... to be added as the 2nd to 15th
25 Defendants."

1 STACEY KC

2 MISS STACEY: Yes, exactly.

3 Paragraph 2 just defines the application documents.

4 MR. JUSTICE SOOLE: Was there not an amended claim form?

5 I thought I saw reference to it in an earlier ----

6 MISS STACEY: Yes, there is an amended claim form, in the petrol
7 stations claim.

8 MR. JUSTICE SOOLE: Should that not ----

9 MISS STACEY: Particulars of claim including amended ----

10 MR. JUSTICE SOOLE: No, the particulars of claim is separate from
11 the claim form. There is an amended claim form; is that
12 right?

13 MISS STACEY: Yes. The claim form and particulars of claim and we
14 can just insert "amended" in front of "claim form", amended
15 particulars of claim.

16 MR. JUSTICE SOOLE: Yes, but sorry, we do not have particulars of
17 claim.

18 MISS STACEY: We do.

19 MR. JUSTICE SOOLE: They do not need to be amended?

20 MISS STACEY: They have been because they were served on persons
21 unknown, so we have an amended claim form.

22 MR. JUSTICE SOOLE: No, no. Do we have particulars of claim which
23 refer to the named defendants?

24 MISS STACEY: No, no they would need to be amended first.

25 MR. JUSTICE SOOLE: What are the... Do we have the particulars of

1 STACEY KC

2 claim here?

3 MISS STACEY: No, but I have them in court.

4 MR. JUSTICE SOOLE: For future reference, more documents: I just
5 do not have time to go around trying to dig them out. I knew
6 there were some missing ones.

7 MISS STACEY: Yes, the particulars of claim in the petrol stations
8 claim do not, obviously, include any named defendants so they
9 are particulars of claim based on conspiracy to cause economic
10 torts and they list the activities taken out on the forecourts
11 of a service station as the basis of the entitlement to the
12 final injunction. That is the cause of action. They were
13 amended pursuant to Hill J's hearing in order to clarify
14 further the steps we say are unlawful. So it was an amendment
15 to deal with ----

16 MR. JUSTICE SOOLE: They have been amended?

17 MISS STACEY: Yes, they have, yes.

18 MR. JUSTICE SOOLE: I would like to see them.

19 MISS STACEY: My Lord, I can give you the front sheet but I do not
20 think you need the rest because it is just ----

21 MR. JUSTICE SOOLE: That is the claim form.

22 MISS STACEY: That is the amended particulars of claim. (*Same*
23 *handed*)

24 MR. JUSTICE SOOLE: Thank you. What is the amendment to the claim
25 form pursuant to the order of Hill J? Was it crossing out the

1 STACEY KC

2 word "environmental"?

3 MISS STACEY: Yes. There was an amendment to the reference to
4 persons unknown, the description, because the evidence before
5 Hill J was it was not simply environmental protest because
6 there were spin-off movements and she was satisfied that ----

7 MR. JUSTICE SOOLE: Yes, I see. Now we have this definition of
8 "application document", what is going to be done with them?

9 MISS STACEY: That is dealt with in paragraph 3, my Lord, the
10 different methods of service propose. You can take out
11 reference to CPR 6.9 that can be struck through, paragraph 3.
12 The proposal is that such documents be served on the named
13 defendants by posting them ----

14 MR. JUSTICE SOOLE: Just looking ahead, we do not need to include
15 things like "re-amended particulars of claim" and other things
16 in the definition; is that right?

17 MISS STACEY: My Lord, in order to ensure that it covers all
18 future documents, I think we probably should. So can
19 I propose a form of wording. In paragraph 2 if we can say,
20 "... amended claim form, amended particulars of claim, any
21 subsequent amendment."

22 MR. JUSTICE SOOLE: Yes, we need to distinguish do we not, between
23 retrospective approval of modes of service of that which have
24 been supplied and future service.

25 MISS STACEY: Yes. Paragraph 2 deals with those documents that

1 STACEY KC

2 have already been served. My understanding is that the
3 amended claim form when it refers to "claim form" and
4 "particulars of claim" it was intended to read "amended claim
5 form" and "amended particulars of claim".

6 MR. JUSTICE SOOLE: I suggest it may be simpler if we divided it
7 up between... if we do keep it as application documents and
8 then have some further order to deal with future documents.

9 MISS STACEY: Yes, future documents per paragraph 11 of McGowan J.

10 MR. JUSTICE SOOLE: Yes.

11 MISS STACEY: We still need to insert the words "amended" before
12 "claim form" and "particulars of claim".

13 MR. JUSTICE SOOLE: Yes.

14 MISS STACEY: At paragraph 3 ----

15 MR. JUSTICE SOOLE: What is the "Shell Petrol Stations Injunction
16 Order"?

17 MISS STACEY: That is the ----

18 MR. JUSTICE SOOLE: The Hill J order.

19 MISS STACEY: That is the Hill J order which is defined in the
20 first recital.

21 MR. JUSTICE SOOLE: Yes, you need ----

22 MISS STACEY: I will track through the reference, yes.

23 MR. JUSTICE SOOLE: I am thinking of in the context of when you
24 were going to be adding the McGowan order.

25 MISS STACEY: Yes. Okay.

1 STACEY KC

2 Are we on paragraph 3 ----

3 MR. JUSTICE SOOLE: Mr. Laurie, I am going through the drafting.

4 I will come back to you on any points of principle that arise
5 that you want to make.

6 Actually, if you want to have the order as this order as

7 ----

8 MISS STACEY: In paragraph 3.

9 MR. JUSTICE SOOLE: Yes. In paragraph 3 you are asking under
10 6.15(2) brought in by 6.27.

11 MISS STACEY: Yes, the order would not come into my Lord, yes. It
12 is all the documents, as you say, retrospectively being
13 sanctioned.

14 MR. JUSTICE SOOLE: Yes.

15 MISS STACEY: "... shall serve the Application Documents" then.

16 In fact what I think I need to say there, my Lord, is "the
17 Application Documents and the various documents that are
18 referred to in Ms. Oldfield's witness statement that have
19 already been served." That would be (it is page 194 of the
20 bundle) the application documents, the 2024 orders and the
21 2024 pleadings which she refers to in paragraph 3.11 of her
22 statement.

23 MR. JUSTICE SOOLE: I am finding it hard to follow at the moment.

24 MISS STACEY: My Lord, paragraph 3 is intended to cover all of
25 those documents that have already been served on those

1 STACEY KC

2 individuals. They are identified ----

3 MR. JUSTICE SOOLE: If you are going to get retrospective approval
4 of the mode of service, does it not need to include the
5 supporting documents for the application?

6 MISS STACEY: And ancillary documents.

7 MR. JUSTICE SOOLE: I do not know about "ancillary".

8 MISS STACEY: It says: "... and any other documents in the
9 proceedings". That could be read at currently existing.

10 I was trying to get away from the notion that it might extend
11 to future documents.

12 MR. JUSTICE SOOLE: Sorry, where is the application dated 12th
13 February?

14 MISS STACEY: Where are you reading from, my Lord?

15 MR. JUSTICE SOOLE: Paragraph 2.

16 MISS STACEY: Paragraph 2.

17 MR. JUSTICE SOOLE: Do the application documents not include the
18 application itself?

19 MISS STACEY: The application documents are defined. They ought
20 to include the application, yes. The paragraph as currently
21 drafted does not refer specifically to the application.

22 MR. JUSTICE SOOLE: Which is not helpful when we are trying to
23 get... when your application is to ----

24 MISS STACEY: But the evidence does support my submission that the
25 application documents, including the application, have in fact

1 STACEY KC

2 been served in that manner. It is just a question of
3 rewording, I suggest, paragraph 2 to ensure that one knows
4 what we are talking about.

5 My Lord, I am told that the claim form and the
6 particulars of claim which have been served are not the
7 amended versions. Just so we are clear ----

8 MR. JUSTICE SOOLE: I am not at all clear, I am completely
9 confused.

10 MISS STACEY: My Lord, we have not served the claim form or the
11 particulars of claim on the named defendants because they have
12 not yet been joined.

13 MR. JUSTICE SOOLE: Yes, that does not surprise me.

14 MISS STACEY: What has been served is the application documents
15 which were referred to in Ms. Oldfield's fifth witness
16 statement.

17 MR. JUSTICE SOOLE: The amended claim form and the amended
18 particulars of claim have been served on the persons unknown
19 by the means sanctioned by the order of McGowan J.

20 MISS STACEY: Exactly, paragraph 11. That is not what I am asking
21 your Lordship to endorse.

22 MR. JUSTICE SOOLE: Yes. I am trying to draw a distinction
23 between things that are being approved or you are seeking a
24 court's approval retrospectively and things which are for the
25 future.

1 STACEY KC

2 MISS STACEY: This section of the order is retrospective insofar
3 as it is referring to paragraph 3. My Lord, if I can ask you
4 to look at the substance of paragraph 3 and perhaps it might
5 become clearer. "Pursuant to 6.15(2)" -- if we can make that
6 amendment -- "the Claimant in the proceedings for service of
7 the Application Documents by the following method is good
8 service:" That is essentially what I am asking you to...
9 That is dealing with stuff that has already happened.

10 MR. JUSTICE SOOLE: The claim form and particulars of claim have
11 not been ----

12 MISS STACEY: No, no, that we need to tweak. My Lord, you are
13 right, the application documents, I fully recognise, needs to
14 be amended to reflect the fact that those documents have not
15 been served. I am seeking to gain retrospective endorsement
16 of the steps that have already been taken, namely the sealed
17 application notice, the fourth witness statement of Alison
18 Oldfield and exhibits, the draft order to the application, the
19 fifth witness statement, and the various hearing bundles.

20 MR. JUSTICE SOOLE: Yes.

21 MISS STACEY: Those are the documents which ought to be within the
22 definition of "application documents". I recognise it is not
23 drafted in that way but that is what it should say. That is
24 what we are dealing with. Pursuant to paragraph 3, my Lord,
25 what I am asking your Lordship to do is, pursuant to CPR

1 STACEY KC

2 6.15(2) endorse and 6.27, order that the service of those
3 application documents pursuant to the amended definition in
4 the manner set out in 3.1 is good service. Now, I fully
5 recognise my Lord I have to do some amending in order to get
6 there, but that what I am after.

7 MR. JUSTICE SOOLE: Yes.

8 MISS STACEY: The methods which are set out in 3.1, 3.1.1 is
9 postage at the last known addresses, taking your Lordship
10 through the evidence in relation to that. 3.1.2 needs a
11 tweak, my Lord, because this is the social media accounts in
12 relation to two individuals and we have only managed to do it
13 in relation to Facebook for Ms. Harris.

14 MR. JUSTICE SOOLE: 3.1.2 is only one individual.

15 MISS STACEY: Exactly 3.1.2 relates to Ms. Harris.

16 MR. JUSTICE SOOLE: Yes.

17 MISS STACEY: And 3.1.2.1 is Facebook. We have managed to do that
18 so they can stay. But 3.1.2.2 and 3.1.2.3 can come out. My
19 Lord you may recall that I said to you we served using the
20 Facebook social media account, but there are problems with
21 Twitter and LinkedIn that we have identified since drafting
22 this order.

23 MR. JUSTICE SOOLE: Because the second bundle could not go
24 through?

25 MISS STACEY: That is in relation to the next individual, no. The

1 STACEY KC

2 problems are that... Well, we could. The Instagram, I am
3 told, which is the bottom one, rejected half of the message,
4 it was too big so that we cannot serve there. Twitter, I am
5 also told, there are practical issues with serving at Twitter
6 but we have managed to do Facebook.

7 MR. JUSTICE SOOLE: So 3.1.2.2 and 3.1.2.3 come out?

8 MISS STACEY: Yes.

9 MR. JUSTICE SOOLE: So the only social media account is 3.1.2.1;
10 is that right?

11 MISS STACEY: That is right. Because it is only dealing with
12 documents we have already served I do not need to ----

13 MR. JUSTICE SOOLE: Including the fifth witness statement?

14 MISS STACEY: Including the fifth witness statement in relation to
15 Ms. Harris, yes.

16 MR. JUSTICE SOOLE: 3.1.1 does not include those where the
17 document was not posted but was hand delivered to ay the
18 address or by hand at the end?

19 MISS STACEY: It does say "or by hand", yes, or "service by hand".
20 I suppose we could say, "as set out in the witness statement
21 above."

22 MR. JUSTICE SOOLE: Or... well ----

23 MISS STACEY: You could include ----

24 MR. JUSTICE SOOLE: I do not like referring to "evidence" in ----

25 MISS STACEY: I see. That was intended to cover the hand

STACEY KC

delivery, which was then attempted as a ----

MR. JUSTICE SOOLE: It has to be clear it is hand delivery to the address not to the person.

MISS STACEY: Or by hand delivery to the addresses.

MR. JUSTICE SOOLE: I will leave you to draft it.

MISS STACEY: I have the point.

MR. JUSTICE SOOLE: It has to be made clear.

MISS STACEY: Yes. So I will insert that wording at the end of 3.1.1. 3.1.2, my Lord, deals with Louise Harris. The last two sub-paragraphs come out. In relation to, over the page, Ms. Burns, that can stay because we have managed to serve to LinkedIn.

MR. JUSTICE SOOLE: This is all addressed in the future by sending.

MISS STACEY: No, no ----

MR. JUSTICE SOOLE: It needs to be made clear by "the sending of"; you need to make clear it is retrospective.

MISS STACEY: It is all retrospective, yes. We can amend that to make it clear that it did not include the supplemental bundle.

MR. JUSTICE SOOLE: Paragraph 4 again merges the two.

MISS STACEY: Yes, it does.

MR. JUSTICE SOOLE: That needs to be unscrambled.

MISS STACEY: I suggest that in paragraph 4 we need a new provision dealing with future documents, my Lord.

STACEY KC

MR. JUSTICE SOOLE: Yes.

MISS STACEY: Future documents. I suggest, if I may ----

MR. JUSTICE SOOLE: Before we end on section 3, what is the position, there is no provision here I think you mentioned before, on any party applying to set aside?

MISS STACEY: That is going to come in at the end, my Lord.

Hill J's order did. I suggest we insert that at the end at as a new paragraph 21, "Any person who wishes to vary or discharge the order", it is a general liberty to apply provision. That can come in at the end.

MR. JUSTICE SOOLE: There is no way in which ----

MISS STACEY: Sorry, my Lord, it could cover the direction. The reason I suggest it comes in at the end is it does not simply relate to service, it might deal with directions too. It ought to be liberty to apply in relation to everything.

MR. JUSTICE SOOLE: Saying it to be good service, that will not be conclusive, will it?

MISS STACEY: No, that is in relation to the past.

MR. JUSTICE SOOLE: No, but as to the past, that will not be conclusive, will it, an order that it is good service?

MISS STACEY: No, no, in relation for example, it is good service for the purposes of CPR Part 6, but it does not prove that the documents have come to the attention of the individuals for any other purpose. It means there is ----

1 STACEY KC

2 MR. JUSTICE SOOLE: What I am saying is in the circumstances I do
3 not want to have any order which prevents a defendant saying
4 that that order should not have been made.

5 MISS STACEY: No. The liberty to apply provision can be framed so
6 as to ensure that that would not be its effect. But I think,
7 is it not, more about not wanting to close off the possibility
8 of a defendant turning up and saying, "I actually did not see
9 these documents"?

10 MR. JUSTICE SOOLE: The way it works on terms of notice and
11 knowledge is that *prima facie* if an order has been served,
12 either personally or by one of the approved methods of
13 alternative service, then effectively knowledge is deemed.
14 But a defendant then has two protections: one, it can seek to
15 set aside the order for alternative service on the basis that
16 that could not reasonably be expected to come to their
17 attention, or which may amount to the same thing to say, and
18 the burden is on them on the civil standard, "I did not know
19 about this".

20 MISS STACEY: My Lord, my proposed liberty to apply provision was
21 intended to cover both.

22 MR. JUSTICE SOOLE: I am very clear, those protective provisions
23 must be provided.

24 MISS STACEY: I understand that. It may be that if we simply put
25 in the liberty to apply provision and put in brackets

1 STACEY KC

2 "(including the order for alternative service)" just to make
3 it absolutely clear that is what it relates to; hopefully that
4 addresses your Lordship's concern.

5 Paragraph 4, my Lord, I propose to put in effectively
6 what McGowan J has at paragraph 11, dealing with future
7 documents.

8 MR. JUSTICE SOOLE: You mean applying that... but she was only
9 applying it to ----

10 MISS STACEY: Persons unknown.

11 MR. JUSTICE SOOLE: ---- persons unknown.

12 MISS STACEY: She was. I suggest that we list those methods of
13 service and then go back to 3.1.1, make it forward looking so
14 that is posting at addresses that we have and then 3.1.2 and
15 3.1.3 in relation to those two social media accounts. My
16 Lord, in relation to the social media, I am not wanting to
17 overcomplicate it, I think we need to qualify the obligation
18 as a reasonable endeavors one, because my concern is that we
19 find ourselves unable to join those two individuals via those
20 accounts because we have been blocked. So it has to be
21 qualified to reflect that possibility.

22 MR. JUSTICE SOOLE: What happens if you then cannot achieve that?

23 MISS STACEY: Then you are back to Mr. Holland's situation. The
24 only reason we are offering those two social media accounts is
25 because we identified ----

1 STACEY KC

2 MR. JUSTICE SOOLE: Something better than that which is provided
3 or more immediate than something which is provided to persons
4 unknown?

5 MISS STACEY: Quite. We could take the view it is unnecessarily
6 overcomplicating things and have all three individuals in the
7 same category as persons unknown, but we are seeking to do
8 more.

9 I propose, my Lord, at paragraph 4, I insert a "future
10 documents" provision which lists the existing methods against
11 persons unknown and, in addition to that, postal addresses and
12 the two social media links for those two individuals, with a
13 qualified obligation. Then you have the certificate of
14 service provision, which applies to that future looking
15 exercise.

16 MR. JUSTICE SOOLE: All right.

17 MISS STACEY: Then 4.2 then, I think, stays, in relation to named
18 defendants "be deemed effective as at the latest date".

19 MR. JUSTICE SOOLE: I have just seen the time.

20 MISS STACEY: Yes. My Lord, I am so sorry it has taken so much
21 longer.

22 MR. JUSTICE SOOLE: There is quite a lot more to do as well.

23 MISS STACEY: I am in your hands.

24 MR. JUSTICE SOOLE: I will rise now until five past two.

25 MISS STACEY: Okay.

1 STACEY KC

2 MR. JUSTICE SOOLE: Whatever the final order is that is being
3 proposed I will need to see it in court. I am not going to
4 deal with it by way of e-mails, for example.

5 MISS STACEY: No, no. My Lord, I do not anticipate anything.
6 I am not going to, unless you would like me to, spend the
7 lunchtime adjournment drawing anything up. What I could do is
8 once we have gone through everything circulate a draft that
9 reflects a position that your Lordship is indicated you are
10 content to land at and then we can come back. Would you
11 rather me deal with it in a different way? I want to be as
12 helpful as I possibly can.

13 MR. JUSTICE SOOLE: Whatever happens, it happens in court.

14 MISS STACEY: Understood.

15 MR. JUSTICE SOOLE: That is the point. You need to think about
16 when that can be dealt with.

17 MISS STACEY: Yes.

18 MR. JUSTICE SOOLE: And also a note if there is going to be an
19 adjournment, for example, a notice of that and so on.

20 MISS STACEY: Understood.

21 MR. JUSTICE SOOLE: Absent particular litigants in person and
22 unknown and so on, but also even if everybody was represented,
23 I just cannot deal with such a thing by e-mails back and forth
24 and drafts and things ----

25 MISS STACEY: No, no, I understand.

1 STACEY KC

2 MR. JUSTICE SOOLE: ---- we have to go through it. It is
3 particularly important that I am not the draftsman.

4 MISS STACEY: No, no, I was not proposing you should be. It is
5 just a question of when I start drafting. I do not want to
6 draft until we have gone through everything.

7 MR. JUSTICE SOOLE: Then it may be we have to adjourn to a further
8 day.

9 MISS STACEY: Yes, indeed.

10 MR. JUSTICE SOOLE: I cannot sit tomorrow; I am away.

11 MISS STACEY: Perhaps we can do the best we can and re-list it for
12 a hearing to finalise everything and deal with further
13 service. But we are where we are. I am sorry that I have not
14 been able to provide you with an order that we do not need to
15 amend.

16 MR. JUSTICE SOOLE: Yes. Very well. We will resume at ten past
17 two.

18 ***(Adjourned for a short time)***

19 MR. JUSTICE SOOLE: I am sorry, I had to deal with an urgent thing
20 that blew up.

21 MISS STACEY: Not at all. My Lord, I have handed you a copy of
22 the document that we have prepared over lunch trying to amend
23 so we reflected changes that you and I were discussing.

24 MR. JUSTICE SOOLE: Has Mr. Laurie ----

25 MISS STACEY: Mr. Laurie been provided with a copy, yes.

1 STACEY KC

2 Hopefully this will help your Lordship in terms of clarifying
3 where we have got to. Shall I give you a moment to read it?

4 MR. JUSTICE SOOLE: No, take me through it.

5 MISS STACEY: You are will see on the third page I have removed
6 "proposed" on the front sheet.

7 MR. JUSTICE SOOLE: Yes.

8 MISS STACEY: Then the recitals had been amended to include the
9 orders of McGowan J, Johnson J, relating to the Petrol
10 Stations claim, Bennathan J in relation to the Tower and Haven
11 claims and then a reference to the orders of Hill J
12 separately.

13 MR. JUSTICE SOOLE: Bennathan J is the Tower claim?

14 MISS STACEY: That is the Tower and Haven, Bennathan J dated 5th
15 May relating to claim Tower and claim Haven ----

16 MR. JUSTICE SOOLE: Yes.

17 MISS STACEY: ---- and the order of Hill J dated 28th April and
18 23rd May, which are defined.

19 MR. JUSTICE SOOLE: Yes, one of them is the police disclosure
20 order.

21 MISS STACEY: We have taken out Recital 2.

22 MR. JUSTICE SOOLE: Yes.

23 MISS STACEY: Recital 3 has been truncated so it just deals with
24 "Upon the application".

25 MR. JUSTICE SOOLE: Paragraph 1 of the order removes ----

1 STACEY KC

2 MISS STACEY: I have not inserted that yet, but that is just
3 delling you what we are going to do. We are going to amend
4 the Schedule 1 to remove Mr. Gingell, yes. That is why that
5 is in square brackets. Obviously that will not appear in the
6 final version.

7 MR. JUSTICE SOOLE: No, but Schedule 1 will exclude that.

8 MISS STACEY: It will be replaced, yes, and amended it to say 2nd
9 to 15th rather than 16th defendants.

10 Paragraph 2, my Lord, has been amended. The bit in
11 square bracket is to identify all those documents that we say
12 should be within the definition of the "application documents"
13 the backward-looking documents that we served the named
14 persons with.

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: Those shall be referred to as the application
17 documents.

18 At paragraph 3, my Lord you will see, I have taken out
19 the reference to 6.9 and I have amended that to read "Pursuant
20 to CPR 6.15 and 6.27 the service by the Claimant in the
21 proceedings at Stations of the application documents shall be"
22 ---- I do not know if there are two references to... we can
23 take out the second reference to the proceedings I think ----
24 "good service", then 3.1 "on the Named Defendants by the
25 following methods".

1 STACEY KC

2 MR. JUSTICE SOOLE: Yes, I think you cross out the second "in the
3 proceedings".

4 MISS STACEY: Indeed I have taken that out. I can probably merge
5 3.1 into 3, "by the following methods". Then I have set out
6 the methods and made sure it is backward looking by saying "by
7 the posting between dates of".

8 MR. JUSTICE SOOLE: Yes.

9 MISS STACEY: I have included Special Delivery because that is
10 what the evidence covers ----

11 MR. JUSTICE SOOLE: Yes.

12 MISS STACEY: ---- and hand delivery to the addresses supplied to
13 meet your Lordship's point.

14 3.1.2 is the messaging to "the Third Defendant's social
15 media account" on the date specified. I have taken out the
16 two sub-paragraphs dealing with the other two social media
17 accounts in respect of which we are not able so easily to ----

18 MR. JUSTICE SOOLE: Yes, and you can probably remove that gap
19 before 12th February.

20 MISS STACEY: I can remove the gap indeed.

21 3.1.3 in relation to Ms. Burns, again by the sending of
22 a message on the 5th March and you will note the bit in
23 parenthesis after "application documents" which says, "save
24 for the supplemental bundle which was not possible to upload".
25 That is to deal with the point that I made to your Lordship

1 STACEY KC

2 about the first method went through but the second will not.

3 MR. JUSTICE SOOLE: Yes.

4 MISS STACEY: Something has gone wrong with the font in 4, but
5 this deals with future documents and it essentially replicates
6 McGowan J's order ----

7 MR. JUSTICE SOOLE: Yes.

8 MISS STACEY: ---- so "shall be validly effected by". The first
9 three, my Lord, are McGowan J's order, so you have e-mail,
10 uploading and sending to any person who requested.

11 MR. JUSTICE SOOLE: Yes, that is the generic e-mail, there is no
12 personal e-mail addresses.

13 MISS STACEY: No. In fact it may be sensible to pull out 4.3
14 because that actually is not upon the main defendants. That
15 is in relation to other persons. That probably should be in a
16 separate provision, that is 4.3.

17 MR. JUSTICE SOOLE: Yes.

18 MISS STACEY: That does not really strictly come under names, so
19 I can pull that out.

20 Then current 4.4 ----

21 MR. JUSTICE SOOLE: Becomes 4.3.

22 MISS STACEY: ---- becomes 4.3, that is posting.

23 Then you have got 4.4. 5 becomes 4.4 in addition, in
24 relation to third and I have inserted the words "to the extent
25 that it is possible to do so in practice" to deal with the

1 STACEY KC

2 qualification that I suggested we needed just in case we are
3 blocked.

4 MR. JUSTICE SOOLE: Yes, it is a slightly odd thing whereby
5 something is ----

6 MISS STACEY: That was my ----

7 MR. JUSTICE SOOLE: The qualification means that if you cannot do
8 it you cannot do it.

9 MISS STACEY: Indeed, it is to cover that scenario. It is a bit
10 like when we put the warning notice up we are under an
11 obligation to use best endeavors to do at least a certain
12 number. We do not to fall short because of inability in
13 practice to comply.

14 4.6 becomes 4.5 and the same point applies in relation
15 to a different social media account.

16 Then paragraph 5, my Lord, relates to the verification
17 process, but only in relation to future documents; so
18 certificate of service in relation to the service of future
19 documents in accordance with the methods set out above.

20 MR. JUSTICE SOOLE: That is because you need to have that ----

21 MISS STACEY: That is a requirement ----

22 MR. JUSTICE SOOLE: Of 6.15(4).

23 MISS STACEY: Indeed. That ticks those boxes so you have
24 verification by certificate of service, that is 5.1. 5.2 is
25 the date on which such service is deemed effective and then

1 STACEY KC

2 5.3 shall be given sufficient service because the order is
3 being made by the court for alternative service.

4 Then 6, my Lord, is another requirement 6.15(1) which is
5 the date for the acknowledgment of service or the defence.

6 What we have done there ----

7 MR. JUSTICE SOOLE: I am still on paragraph 7.

8 MISS STACEY: Paragraph 7?

9 MR. JUSTICE SOOLE: Where are you on?

10 MISS STACEY: I am on 6.

11 MR. JUSTICE SOOLE: You are on 6?

12 MISS STACEY: If you look at 6, my Lord, this is a requirement
13 specifically at 6.15(4) where you have to specify the date for
14 the acknowledgment.

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: What we have not done there is set out the date in
17 that paragraph. We have cross-referred down to the date on
18 which ----

19 MR. JUSTICE SOOLE: Yes, something has gone wrong there, "power in
20 relation to ..." Should that be in relation to paragraph 4?

21 MISS STACEY: In relation to paragraph 4, yes, that is right.

22 MR. JUSTICE SOOLE: You cross out para, do you?

23 MISS STACEY: Yes, cross out "para", sorry, I did not see that,
24 yes, paragraph 4. That cross-refers to 8 and 9 which are ----

25 MR. JUSTICE SOOLE: Should it be "where alternative methods is

1 STACEY KC

2 permitted"?

3 MISS STACEY: It is permitted, yes.

4 Paragraph 8 we will come on to but that is the date for
5 acknowledgment of service. Then 9 is the date for the
6 defence.

7 MR. JUSTICE SOOLE: Right.

8 MISS STACEY: Then I have inserted, my Lord, you will see a new
9 paragraph 7 which deals with the service of the amended claim
10 form and particulars of claim on the named defendants. I put
11 in brackets "(sealed copies)" because this is a point I wanted
12 to clarify with your Lordship. We need to be clear as to
13 whether we need to serve sealed copies and whether sealed
14 copies are going to be provided by the court or whether it
15 will be sufficient for us to serve amended copies.

16 MR. JUSTICE SOOLE: What is the position under the rules?

17 MISS STACEY: There is no clear position as far as I can could
18 find. I could not find it over the lunch adjournment. It is
19 matter of practice, I think. It has to be served, the claim
20 form that is.

21 MR. JUSTICE SOOLE: Well, is the claim form resealed? I do not
22 think it is?

23 MISS STACEY: It has been there for ----

24 MR. JUSTICE SOOLE: I am looking here at the one of Hill J.

25 MISS STACEY: Yes.

1 STACEY KC

2 MR. JUSTICE SOOLE: I am just trying to picture it. I am looking
3 at amended claim forms in my sleep virtually. I am trying to
4 remember whether they get sealed or not.

5 MISS STACEY: On each occasion they are amended?

6 MR. JUSTICE SOOLE: I do not think so.

7 MISS STACEY: No, I thought not but I wanted to flag it.

8 MR. JUSTICE SOOLE: This one here is sealed on 24th October. Hang
9 on. That predates the ----

10 MISS STACEY: That was sealed on the amendment, my Lord. We
11 applied on paper ----

12 MR. JUSTICE SOOLE: Was there an original claim form?

13 MISS STACEY: There was and she sealed that when we applied on
14 paper for permission to amend.

15 MR. JUSTICE SOOLE: When you say "she", I am sure Hill J did not
16 apply the seal.

17 MISS STACEY: No, but she gave permission or the claim form to be
18 amended in the manner suggested and a seal was applied.

19 MR. JUSTICE SOOLE: Right.

20 MISS STACEY: We are not asking for permission to amend, you see.
21 That is where it is slightly different here. We are simply
22 amending in consequence of what I anticipate will be an order
23 for joinder. In those circumstances I suggest ----

24 MR. JUSTICE SOOLE: You are going to be re-amending, are you not,
25 to add all the names.

STACEY KC

MISS STACEY: Indeed. The point I am seeking to make it is not an application for permission to amend that needs to necessarily be sealed.

MR. JUSTICE SOOLE: Sorry?

MISS STACEY: My Lord, the bit in square brackets in paragraph 7 is therefore out of an abundance of caution but I suggest we do not need those words.

MR. JUSTICE SOOLE: Yes, but are you applying to amend, to re-amend the claim form?

MISS STACEY: No, my Lord, I am applying for joinder and upon the joinder we will add the names of the named persons. It is a consequence of the application for joinder. I am not applying to amend. Those persons ----

MR. JUSTICE SOOLE: Is that not what happens? Do you not amend the claim form when you add names to it?

MISS STACEY: It is the practical consequence, yes, but I have not made an application for permission to amend because I am applying for defendants to be joined; that is my substantive application.

MR. JUSTICE SOOLE: Right.

MISS STACEY: If you grant me my application for joinder I will add the names of those defendants to the claim form and to the particulars of claim.

MR. JUSTICE SOOLE: How?

1 STACEY KC

2 MISS STACEY: It may be that I need permission. My Lord, I do not
3 have an application for permission before you. It forms part
4 and parcel of the application for joinder, if I may, and
5 I would urge the court to deal with that on an informal basis
6 and treat the application for joinder as encompassing an
7 application for amendment of the current pleadings.

8 MR. JUSTICE SOOLE: There is no amended particulars of claim.

9 MISS STACEY: No, the only amendment will be the addition of the
10 names on the front sheet and you see have seen that my Lord
11 already. On the order, the draft order contains the names, if
12 you go to the first page of the order you have before you.

13 MR. JUSTICE SOOLE: Does the claim not form not to include all the
14 defendants to an action?

15 MISS STACEY: Yes. You have not got that document before you.
16 But the front page of the claim form would need to be amended
17 to add the names which the court is prepared to order the
18 joinder of. Once that happens we have to insert the names on
19 the claim form. It is that document, that is the amendment
20 I have in mind. What I am acknowledging is that I do not have
21 a formal application before you to amend the claim form in
22 order to ----

23 MR. JUSTICE SOOLE: I think that probably is implicit. What I do
24 not have is a document.

25 MISS STACEY: You do not have a document, no. The front page

1 STACEY KC

2 would look exactly as it does on this order, it is simply the
3 addition of those names which you there see.

4 MR. JUSTICE SOOLE: You will need to insert, "The claimant has
5 permission to re-amend the claim form."

6 MISS STACEY: I can put that in the recital.

7 MR. JUSTICE SOOLE: No.

8 MISS STACEY: It would follow the joinder, I think, my Lord, new
9 paragraph 2?

10 MR. JUSTICE SOOLE: Yes, I think that would be the place to have
11 it.

12 MISS STACEY: Permission to amend the claim form to add the 2nd to
13 15th defendants full stop and the particulars of claim.

14 MR. JUSTICE SOOLE: Well, the particulars of claim will have to do
15 more than that, will they not? The particulars of claim will
16 have to deal with the case which has been made against the
17 individual defendants.

18 MISS STACEY: No, my Lord, because this is a conspiracy to cause
19 economic harm case, it is an economic tort case. There is no
20 specific case pleaded in relation to individuals. That forms
21 the subject of... I have to look at the particulars of claim

22 ----

23 MR. JUSTICE SOOLE: If you are saying that the 2nd to 15th
24 defendants are members who have conspired with people you need
25 to allege that.

1 STACEY KC

2 MISS STACEY: Yes, we have alleged that my Lord. At the moment we
3 have alleged that persons unknown have conspired by committing
4 these acts and we have listed the acts out. I suppose my Lord
5 is right, we might have to identify in relation to ----

6 MR. JUSTICE SOOLE: Of course you have to.

7 MISS STACEY: ---- each of the individuals what specific acts they
8 carried out.

9 MR. JUSTICE SOOLE: Just to refer to them otherwise there is no
10 reference to them in the whole of the body of the pleadings by
11 definition because they were not defendants.

12 MISS STACEY: Yes. I do not have that document, so it might have
13 to be the subject of a separate application because unless...
14 We could provide that document to you if you were prepared to
15 deal with it as an implicit application which follows on from
16 joinder. But we is have not prepared the document because we
17 did not know who would be joined. So I do not have that to
18 put before you today.

19 MR. JUSTICE SOOLE: Sorry, one never knows the result of every
20 application, but you need to have all the documents which are
21 necessary for taking the next step. You are asking for a
22 trial to be heard by the 12th May when we do not even have
23 particulars of claim to deal with the individual defendants.

24 MISS STACEY: Indeed. Once individuals are joined we have to look
25 at the pleadings and adapt them accordingly. I do not have an

1 STACEY KC

2 application to deal with that today. I suggest we can deal
3 with it by inserting a new paragraph 2, the permission to
4 amend the claim form, and then making a direction for the
5 service of an amended particulars of claim, which would need
6 to be then served.

7 MR. JUSTICE SOOLE: What, re-amended?

8 MISS STACEY: Re-amended particulars of claim, yes.

9 MR. JUSTICE SOOLE: But normally one does not give permission to
10 amend particulars of claim, indeed normally not even a claim
11 form without seeing a draft.

12 MISS STACEY: No.

13 MR. JUSTICE SOOLE: One does not normally give a general
14 permission to amend.

15 MISS STACEY: It may be that that is a further step. Once you
16 join the persons we then have to go and see how we can plead
17 in relation to the individual persons, produce the draft and
18 then come back, my Lord. That has to be factored into the
19 directions. Alternatively, we can push back finalisation of
20 this order pending us preparing that document and put it
21 before your Lordship.

22 MR. JUSTICE SOOLE: Hmm?

23 MISS STACEY: We can produce such a document and put it before
24 your Lordship so it can be dealt with ----

25 MR. JUSTICE SOOLE: When?

1 STACEY KC

2 MISS STACEY: That can be done relatively quickly. I am sure we

3 ----

4 MR. JUSTICE SOOLE: Again administrative, without a hearing?

5 MISS STACEY: No, not without a hearing. Your Lordship before the
6 luncheon adjournment said any order would need to be finalised
7 in court.

8 MR. JUSTICE SOOLE: Yes, quite.

9 MISS STACEY: That what I have in mind.

10 MR. JUSTICE SOOLE: Yes, go on.

11 MISS STACEY: It may be, as an alternative, given that essentially
12 the application for amendment follows on with the consequence
13 of joinder ----

14 MR. JUSTICE SOOLE: These are all things of which the other
15 parties have had no prior notice.

16 MISS STACEY: No, my Lord, but they have had notice of the
17 application for joinder. It is a consequence of the joinder
18 that they are being added to. It is not a new cause of action
19 that I am suggesting, it is simply particularising their role
20 in the current cause of action which forms the subject of the
21 claim. I am not suggesting it is a small thing, but it is not
22 as though the nature of the claim has been changed in any way.

23 So depending on when your Lordship would wish to re-sit
24 in order for this order to be finalised, it may be that we
25 could produce that document for your Lordship to consider.

1 STACEY KC

2 MR. JUSTICE SOOLE: It will not be done this afternoon.

3 MISS STACEY: No, no. My Lord, the practical reality is whilst
4 I fully recognise we cannot always anticipate what orders are
5 going to be made, we could not have carried out the pleading
6 until we know which individuals are going to be joined. The
7 way in which it is going to be pleaded in relation to them
8 could depend ----

9 MR. JUSTICE SOOLE: You could set it all out and if someone was
10 not joined you could strike them through. You need quite a
11 lot of time to prepare for this.

12 MISS STACEY: I propose, I insert in paragraph 2 permission to
13 amend the claim form simply to add the names, that is a new
14 paragraph 2.

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: Then if I can ask your Lordship to go back to
17 paragraph 7, under "Directions", 6 I think ----

18 MR. JUSTICE SOOLE: Power to amend claim form by addition. Yes.

19 MISS STACEY: New 6(a) under the heading "Directions" I think
20 provision therefore needs to be made for amendment to the
21 particulars of claim in relation to the named defendants.

22 MR. JUSTICE SOOLE: Under what?

23 MISS STACEY: Under the heading "Directions". It is logically the
24 first direction.

25 MR. JUSTICE SOOLE: Should you not be serving the... if you are

STACEY KC

wanting the ----

MISS STACEY: Claim form, yes.

MR. JUSTICE SOOLE: Should you not first serve the re-amended
claim form?

MISS STACEY: Yes.

MR. JUSTICE SOOLE: And the existing amended particulars of claim?

MISS STACEY: Yes, and the existing particulars of claim, amended
particulars of claim. That can be done within a matter of
days.

MR. JUSTICE SOOLE: It is getting quite confusing then, is it not?

MISS STACEY: I wonder whether we leave it at "claim form" ----

MR. JUSTICE SOOLE: Yes.

MISS STACEY: ---- leave out "the particulars of claim" in
circumstances where they are going to need to be more
specific, put a full stop after claim, "the claims on the
named defendant by" ----

MR. JUSTICE SOOLE: The way I am going in my mind at the moment is
that there is no way in which this is going to be having trial
by 12th May. We are not in a position, particularly when we
have not got re-amended particulars of claim, to be making
consequential directions at the trial.

MISS STACEY: Yes.

MR. JUSTICE SOOLE: What is needed is a date for the interim
injunction to be reviewed.

1 STACEY KC

2 MISS STACEY: Yes.

3 MR. JUSTICE SOOLE: On that occasion the judge hearing the interim
4 application can give further directions for trial.

5 MISS STACEY: Yes, although my Lord it would be, if I could urge
6 this upon you, it would be open for you... Permission to
7 amend the particulars of claim I suggest might be capable of
8 being dealt with and a date for the defence between now and
9 that hearing on the basis that there is time between now and
10 then for some of the timetable to be put in place, for us to
11 tidy up the particulars of claim. That can form the subject
12 of a direction, service of that on the named defendants and
13 them to acknowledge service. Those are steps that ought to be
14 capable of being inserted between now and the next hearing.
15 I am not asking for you to do anything more than provide that
16 kind of a limited timetable.

17 MR. JUSTICE SOOLE: If they acknowledge service then they have to
18 serve a defence within a certain number of days thereafter, do
19 they not.

20 MISS STACEY: They do, yes. So ideally what we would be after
21 would be a set of directions from your Lordship taking us to
22 the date by which they need to serve the defence and then you
23 have a hearing. The question of whether or not they are going
24 to be serving the defences is, one might think, somewhat
25 relevant to... what I had in mind is a summary judgment

1 STACEY KC

2 application. I do not think we are going to be in that
3 territory between now and then so, no.

4 But in order to use the time available between now and
5 the next hearing my Lord, we would wish to have some
6 directions put in place, namely permission to re-amend the
7 claim form, permission to re-amend the particulars of claim
8 though I recognise I do not have a document before you, and a
9 date for the acknowledgment of service potentially a date for
10 a defence.

11 MR. JUSTICE SOOLE: The rule requires there to be dates given ----

12 MISS STACEY: Yes.

13 MR. JUSTICE SOOLE: ---- for acknowledgment of service.

14 MISS STACEY: It does. It needs to specify a date which requires
15 to me to produce my amended particulars of claim. My Lord,
16 what I was thinking is if you were, for example, able to sit
17 towards the later end of this week, we could do that by then
18 and finalise the this ----

19 MR. JUSTICE SOOLE: Do what by then?

20 MISS STACEY: Produce the proposed re-amended particulars of claim
21 and at that point put in place a set of directions which would
22 include permission, the acknowledgment and the date for the
23 defence.

24 MR. JUSTICE SOOLE: I must say I do not find it a very
25 satisfactory way of going forward. A directions hearing is

1 STACEY KC

2 supposed to deal with directions and everything is available
3 so one can make the directions that are sought rather than
4 putting it off for another day.

5 MISS STACEY: I recognise that, my Lord. I suppose I am piggy-
6 backing on your Lordship's suggestion that we might have
7 another hearing.

8 MR. JUSTICE SOOLE: It was only because I was not being given a
9 satisfactory document. A lot of this has been done on the
10 hoof and I do not find that very satisfactory. One thing
11 there is going to be is a further hearing review of the
12 existing interim injunction, but in time for that to be
13 decided before the 12th May.

14 MISS STACEY: Yes. Well, my Lord, that may be sufficient for our
15 purposes and we could then make the applications. What is in
16 my mind is that we need to have the permission to amend the
17 particulars of claim and I am trying to secure either it is a
18 hearing before your Lordship by trying to maximise what I can
19 do and I understand that I might be pushing things a little,
20 or we use the subsequent hearing or the continuation hearing
21 for the hearing of that application.

22 MR. JUSTICE SOOLE: Again, an order could be made permitting --
23 I am thinking hypothetically at the moment, although no one
24 had any notice of this -- amended particulars of claim,
25 providing with permission to apply to set it aside on the

1 STACEY KC

2 basis that there has been no notice.

3 MISS STACEY: My Lord, yes, I reiterate what I said before which
4 is whilst it, obviously, would have been preferable for this
5 to have been done before with a schedule redacting according
6 to the order that your Lordship is going to make, it simply is
7 a consequence of the joinder application. We have pleaded a
8 course of action. We have identified persons falling within
9 the category of persons unknown who we say have committed the
10 prohibited act and fall within that cause of action. What we
11 do is particularise their specific involvement. It is not a
12 change to the underlying cause of action that is currently
13 before the court. In those circumstances, I would ----

14 MR. JUSTICE SOOLE: I am making the point this has not been
15 flagged up in any document to the court or the other parties.

16 MISS STACEY: To the court certainly not and not to the other
17 parties either. But we have flagged that we wish to join and
18 it follows from the joinder that they are specifically going
19 to be brought into the ----

20 MR. JUSTICE SOOLE: You are saying that is what these orders
21 provide for.

22 MISS STACEY: Yes.

23 MR. JUSTICE SOOLE: And the Supreme Court endorses that as soon as
24 you possibly do know names in respect of the pleaded alleged
25 conduct ----

1 STACEY KC

2 MISS STACEY: Indeed.

3 MR. JUSTICE SOOLE: ---- then you should apply to the court to
4 join them.

5 MISS STACEY: If you need to perfect it later down the line by re-
6 particularising, then you do that. It should not hold
7 everything up.

8 So on that basis, my Lord, I would ask you for
9 permission to amend today, to re-amend rather, the current
10 particulars of claim and we can include provision for that to
11 be set aside or discharged. You will see in this current
12 order at paragraph 22 I have included a form of wording for
13 discharge and variation. That can be expanded to encompass
14 any permission to amend the particulars of claim.

15 Also I ask your Lordship to bear in mind the purpose of
16 this joinder pursuant to the obligations, the *Canada Goose*
17 guidelines and *Wolverhampton*: it is to facilitate natural
18 justice in the sense that it is to enable parties to come
19 before the court and take part in the proceedings. The
20 document, the re-amended particulars of claim, will be served
21 upon them. If there is provision in the order for them to
22 apply to court to vary and discharge them, they can avail
23 themselves of that. Therefore in those circumstances no
24 prejudice would be caused, as long as there is a sufficiently
25 generous variation and discharge provision.

1 STACEY KC

2 MR. JUSTICE SOOLE: It may be best to work backwards from a date
3 for a date for a further hearing.

4 MISS STACEY: Yes. The expiry date is 12th May. I am sure those
5 behind me are going to tell me there is further time that we
6 need for placing a warning notice up. *(Pause while*
7 *instructions were received)* I am told it is 14 days from 12th
8 May to place warning notice up on all the sites.

9 MR. JUSTICE SOOLE: Sorry?

10 MISS STACEY: 12th May is the expiry date.

11 MR. JUSTICE SOOLE: Yes.

12 MISS STACEY: I am told it takes two weeks to do the rounds to
13 replace all the notices.

14 MR. JUSTICE SOOLE: Yes, I can imagine.

15 MISS STACEY: One would need to have a hearing to accommodate that
16 period of time before expiry.

17 MR. JUSTICE SOOLE: Yes. The next term starts on Tuesday 9th
18 April. So if it were in the week starting the 15th April, but
19 not a Monday ----

20 MISS STACEY: Yes.

21 MR. JUSTICE SOOLE: ---- I say "not a Monday" because you need to
22 have reading time for whoever is doing it.

23 MISS STACEY: Yes. That would work. Currently it is listed for a
24 day and a half, that is pursuant to Hill J's order. No,
25 sorry, our directions suggest a day and a half rather for the

STACEY KC

final hearing.

MR. JUSTICE SOOLE: It needs a date for the interim injunction, does it not?

MISS STACEY: Yes, I would have thought. Currently we suggested one and a half days.

MR. JUSTICE SOOLE: It has taken us nearly a day to do directions.

MISS STACEY: A substantive hearing a day, possibly plus a bit of reading time, a day and a half in total.

MR. JUSTICE SOOLE: No, we do not include reading time in the estimate, the estimate is from counsel getting up and the final defendant sitting down. In this case there might be a reserved judgment, I suppose.

MISS STACEY: I would have thought a day then, my Lord. Yes.

MR. JUSTICE SOOLE: In which case would it be sufficient to have a date for acknowledgment of service some time not necessarily long before then.

MISS STACEY: Yes. That is five weeks between now and then I am told. That gives us a window of five weeks for any directions your Lordship is proposing to make, acknowledgment of service.

MR. JUSTICE SOOLE: I would not propose a date of defence before the hearing.

MISS STACEY: A date for the acknowledgment of service, yes, my Lord. That would be on the basis that permission is given, obviously subject to the variation or discharge in relation to

1 STACEY KC

2 the reamendment of the particulars of claim.

3 MR. JUSTICE SOOLE: What reason, the acknowledgment of service is
4 of the claim form not the particulars of claim.

5 MISS STACEY: Indeed, I was wondering what your Lordship was
6 thinking in relation to the permission to amend the
7 particulars of claim.

8 MR. JUSTICE SOOLE: Well, drawn in for litigation, it is the...
9 What are you proposing?

10 MISS STACEY: I am proposing that you give me permission as a
11 consequence of the joinder. I am assuming here that we are
12 going to have an order for joinder of these individuals,
13 following such order for joinder we have permission to amend,
14 because we have to, the particulars of claim to particularise
15 the cause of action in relation to each of the named
16 defendants. Any such named defendant has permission to apply
17 to vary or discharge. The one my Lord follows, I fully
18 recognise ----

19 MR. JUSTICE SOOLE: When are you suggesting acknowledgment of
20 services and defence so on?

21 MISS STACEY: The acknowledgment of service can follow from the
22 date I will give you in relation to the service of the claim
23 form which can be done in matter of days. Paragraph 7 shall
24 serve copies of the amended claim form on the named defendants
25 by end of the week, which would be 15th March.

1 STACEY KC

2 MR. JUSTICE SOOLE: I think it is best to say seven days whatever
3 it is.

4 MISS STACEY: Yes, so acknowledgment of ----

5 MR. JUSTICE SOOLE: By 4 p.m. on?

6 MISS STACEY: 18th March. I was going to invite your Lordship to
7 make an order in relation to permission to amend the
8 particulars of claim in the next paragraph. If we skip over
9 that ----

10 MR. JUSTICE SOOLE: What is the wording you would have for that?

11 MISS STACEY: The claimant shall have permission to re-amend the
12 particulars of claim to plead its cause of action against the
13 individual, the named defendants, and shall file such
14 re-amended particulars of claim with the court by and specify
15 a date.

16 MR. JUSTICE SOOLE: No, I want to see that before I give any
17 permission.

18 MISS STACEY: Can we include provision for that ----

19 MR. JUSTICE SOOLE: Maybe we can do that if, it is not convenient,
20 if I can adjourn the hearing to some time later this week, for
21 example Friday p.m.

22 MISS STACEY: Yes. My Lord, then we can produce a document.

23 MR. JUSTICE SOOLE: Actually Friday p.m. is not good, I have a
24 late hearing on Monday morning with people in America so we
25 are starting later than normal to accommodate them. I am

1 STACEY KC

2 completely away tomorrow, I cannot Wednesday afternoon, I am
3 in court Wednesday morning.

4 MISS STACEY: Monday the 18th, my Lord?

5 MR. JUSTICE SOOLE: If you wish to attend does that cause you any
6 particular difficulties Monday, the 18th, I am hoping I can
7 hear all I need to from you today, you have every right to
8 attend of course, they still have not go their... While they
9 are sorting out their order.

10 MR. LAURIE: It is not more difficult than any other day.

11 MR. JUSTICE SOOLE: How far do you have to come?

12 MR. LAURIE: I come from Faversham in Kent. I can make 10.30 on
13 tube trains, if that is okay.

14 MR. JUSTICE SOOLE: How are you going to notify the parties of
15 that?

16 MISS STACEY: We can serve in accordance with paragraph 4 my Lord
17 of this order.

18 MR. JUSTICE SOOLE: Which order?

19 MISS STACEY: This draft order, there is provision for service on
20 the named ----

21 MR. JUSTICE SOOLE: No, no, no the adjournment of this hearing,
22 how will that be notified?

23 MISS STACEY: We can send to the e-mail addresses, we can upload
24 the link that is existing, the McGowan J order, and on the
25 website link. In relation to the named individuals we can

1 STACEY KC

2 send by First Class Post and Special Delivery. So using the
3 methods of service that are set out in paragraph 4 of this
4 draft order. We can do that today.

5 MR. JUSTICE SOOLE: I think you would need to draw up an order
6 adjourning this hearing part heard.

7 MISS STACEY: As soon as we have the order.

8 MR. JUSTICE SOOLE: When you say the order?

9 MISS STACEY: We need to draw up a note setting out... Your
10 Lordship was asking me how I would notify in relation to the
11 notice of hearing for Monday.

12 MR. JUSTICE SOOLE: There would need to be an order for that
13 purpose.

14 MISS STACEY: Exactly, there would need to be an order for that
15 and that would then be served.

16 MR. JUSTICE SOOLE: Yes, a separate order.

17 MISS STACEY: In accordance with paragraph 4 of this draft, those
18 various steps.

19 MR. JUSTICE SOOLE: No, there will not be any order, this draft
20 will not be ----

21 MISS STACEY: I know but it is the methods. My Lord, sorry for
22 not being clear, you were asking me by what method I was
23 proposing to notify. My answer to you was that we would use
24 the very same methods as are set out in paragraph 4 of this
25 draft, albeit that is not yet made, so the methods of those

1 STACEY KC

2 which we would, well, they would stand.

3 MR. JUSTICE SOOLE: Right. Just for the purpose of preparing your
4 orders, what I am proposing is that you have... That affects
5 the date of service of the amended claim form.

6 MISS STACEY: Well, the amended claim form ----

7 MR. JUSTICE SOOLE: They could be done by the end, your order to
8 provide it to be done by 4 p.m. on the following Friday.

9 MISS STACEY: Yes, quite, we can just tweak the date.

10 MR. JUSTICE SOOLE: On the 22nd March.

11 MISS STACEY: On the 22nd of March. So my Lord it would be an
12 order adjourning ----

13 MR. JUSTICE SOOLE: Acknowledgment of service.

14 MISS STACEY: We calculated 21 days from the date of this order.

15 MR. JUSTICE SOOLE: You mean from the 18th?

16 MISS STACEY: From the 18th, well, you see the explanatory note,
17 the reference of 21 days is intended to reflect seven days for
18 the service to perfected then a 14-day period.

19 MR. JUSTICE SOOLE: I am not sure where the seven days came from.

20 MISS STACEY: The date, it is just the period of time we
21 calculated on the broad brush basis it would take us.

22 Actually it is too generous, we do not need that long.

23 MR. JUSTICE SOOLE: There is Easter as well, so?

24 MISS STACEY: As we say in the note, we are content for the date
25 to be calculated 21 days from the date of the order.

1 STACEY KC

2 MR. JUSTICE SOOLE: At the moment I would suggest you have
3 acknowledgment of service by 4 p.m. on 15th April.

4 MISS STACEY: Yes. Then 9 would come out then. The wording in 10
5 my Lord reflects the order of Hill J where she provided that
6 any person who was interested and wished to be heard pursuant
7 to rule 40.9 should notify the claimant in advance and give 48
8 hours' notice. Because otherwise the court is bounced into a
9 position which it might not be prepared to deal with and that
10 is what paragraph 10 is intended to...

11 Paragraph 11 is the updating evidence that my clients
12 can serve.

13 MR. JUSTICE SOOLE: That is not for a final injunction.

14 MISS STACEY: That is not for a final injunction so that can
15 probably go. 12 also goes on the basis that we have not got to
16 that yet. 13 is the list, you will see what I ----

17 MR. JUSTICE SOOLE: Well, do we not need a provision to the effect
18 that matter shall be listed for a review of the interim
19 injunction?

20 MISS STACEY: That is what 13 is trying to do.

21 MR. JUSTICE SOOLE: No, 13 was to do with a final hearing.

22 MISS STACEY: I know. If you scratch out the word "final", which
23 I put in square brackets in anticipation that that would have
24 to go, "listed for a hearing on the first available date in",
25 we can put in the day with a time estimate for a continuation

STACEY KC

of the order ----

MR. JUSTICE SOOLE: I do not want to give a specific day, I am not going to give a specific day.

MISS STACEY: No, with a time estimate of one day.

MR. JUSTICE SOOLE: The hearing has to say what it is, it is for a hearing of?

MISS STACEY: I put in brackets as just a suggestion for a continuation of the orders or a review as to whether the ----

MR. JUSTICE SOOLE: Is not review, a review of the interim injunction?

MISS STACEY: It is a review of the interim injunction and directions for a final hearing.

MR. JUSTICE SOOLE: Review of the interim injunction expiring 12th May.

MISS STACEY: Yes, and directions.

MR. JUSTICE SOOLE: And directions for trial.

MISS STACEY: Yes. We can take out the words "if possible prior to 12th May" at the end of that paragraph.

MR. JUSTICE SOOLE: I wonder if it might be sensible to say a day and a half.

MISS STACEY: Yes.

MR. JUSTICE SOOLE: Do you think?

MISS STACEY: I do. We have not therefore included any date for a defence which I know the rule requires.

1 STACEY KC

2 MR. JUSTICE SOOLE: I would rather leave that until directions,
3 can we do that without it ----

4 MISS STACEY: It invalidates arguably the order for alternative
5 service.

6 MR. JUSTICE SOOLE: In that case the defence, what we can do is
7 give a date for the defence which post dates the interim
8 injunction. It could then be reviewed.

9 MISS STACEY: Yes, it simply said that you must specify the period
10 for an admission, filing the defence, the period.

11 MR. JUSTICE SOOLE: I think I would suggest defence by ----

12 MISS STACEY: After the hearing, the continuation hearing, the
13 review hearing. Two weeks after that.

14 MR. JUSTICE SOOLE: What about a date in May?

15 MISS STACEY: Yes. If the continuation hearing is going to be
16 potentially in the week of 15th April you take two weeks from
17 any, well, the 6th May, the Monday?

18 MR. JUSTICE SOOLE: If it was the week after April how would that
19 fit in with your service? It is getting close is what it
20 comes to.

21 MISS STACEY: Yes, it is.

22 MR. JUSTICE SOOLE: That interim should be in the week commencing
23 ----

24 MISS STACEY: Yes.

25 MR. JUSTICE SOOLE: ---- 15 April.

1 STACEY KC

2 MISS STACEY: So far as the defence is concerned ----

3 MR. JUSTICE SOOLE: I would say by 4 p.m. on 15th May subject to
4 any further order of the court.

5 MISS STACEY: Yes.

6 MR. JUSTICE SOOLE: At the directions hearing.

7 MISS STACEY: Yes.

8 MR. JUSTICE SOOLE: That complies with the rule, and always 4 p.m.
9 subject to ----

10 MISS STACEY: Any further order of the court at the directions
11 hearing.

12 MR. JUSTICE SOOLE: At the hearing.

13 MISS STACEY: Paragraph 14 can go.

14 MR. JUSTICE SOOLE: What about provision for defendants put in
15 evidence for the ----

16 MISS STACEY: We have that here. So, paragraph 14 can go, it is
17 in paragraph 12.

18 MR. JUSTICE SOOLE: I would suggest they go in after the order
19 that there is going to be an interim hearing. You have put in
20 your evidence, have you not?

21 MISS STACEY: We have not updated it yet but we are about to, we
22 are poised to file it.

23 MR. JUSTICE SOOLE: Right.

24 MISS STACEY: Because we are having to... The joinder, we are
25 poised as I said in my skeleton argument, I think in

1 STACEY KC

2 Ms. Oldfield's witness statement it is in the process of being
3 finalised.

4 MR. JUSTICE SOOLE: When can that be?

5 MISS STACEY: That can be done in the next day or so.

6 MR. JUSTICE SOOLE: This is in support of the continuation of the
7 interim.

8 MISS STACEY: Yes, paragraph 11 of this draft order envisages that
9 should be done, re to file an update, serve any updating
10 evidence by 4 p.m., in fact we can do that in the next couple
11 of days.

12 MR. JUSTICE SOOLE: If that can be done by Friday 4 p.m. on
13 Friday 15th.

14 MISS STACEY: Thereafter ----

15 MR. JUSTICE SOOLE: March.

16 MISS STACEY: Yes, paragraph 12 is the defendants who may wish to
17 file any evidence.

18 MR. JUSTICE SOOLE: I will give longer than two weeks,
19 particularly allowing for Easter.

20 MISS STACEY: 5th April, which is three weeks.

21 MR. JUSTICE SOOLE: 5th April is Good Friday, is it not, no,
22 sorry, it is not. I think I will be minded to say 4 p.m. on
23 Monday the 8th, that gives enough time to be reviewed.

24 MISS STACEY: Then you have the listing.

25 MR. JUSTICE SOOLE: Cross out the reference to summary judgement.

1 STACEY KC

2 MISS STACEY: Yes, just so I am clear, in terms of the provision
3 for defence, you were anticipating that follows the hearing,
4 the review hearing, yes.

5 MR. JUSTICE SOOLE: Not before certainly.

6 MISS STACEY: That would go in at paragraph 14, or thereabouts.

7 MR. JUSTICE SOOLE: I do not mind ----

8 MISS STACEY: It is simply for the purposes of ensuring that the
9 alternative order is valid, yes, I follow that. Summary
10 judgement can go, that is 15. Skeleton arguments can probably
11 stay as is. Paragraph 16.

12 MR. JUSTICE SOOLE: What about bundles?

13 MISS STACEY: We have that at 17.

14 MR. JUSTICE SOOLE: For the other side.

15 MISS STACEY: Yes. Bundles would fall into the category of future
16 documents that need to be served. We could put file and serve
17 in paragraph 17.

18 MR. JUSTICE SOOLE: You are not going to be serving hard copies
19 I expect.

20 MISS STACEY: No. We can include an additional provision.

21 MR. JUSTICE SOOLE: I think what I say, "are to file (in
22 electronic and hard copy form) and serve (in electronic
23 form)".

24 MISS STACEY: Yes. I am grateful.

25 MR. JUSTICE SOOLE: We do not need two hard copies. One hard copy

1 STACEY KC

2 will be enough.

3 MISS STACEY: Yes. Then 18 is the requirement for any person who
4 has not complied to apply. Then you have 19-21 actually these
5 are just the repetition of the service against persons unknown
6 provisions.

7 Then 22 my Lord is the discharging variation provision.
8 Then costs. I just wonder in relation to 22, my Lord,
9 Mr. Laurie will no doubt address you on this, he, for example,
10 suggested that he would wish no not receive anything by post.

11 MR. JUSTICE SOOLE: Yes, I know most people ----

12 MISS STACEY: Indeed, that might be an additional, some words can
13 insert in paragraph 22, we can say "may apply to vary and
14 discharge including in relation to alternative service and"
15 for example if they wish to receive the documents by e-mail or
16 post in the brackets in order to accommodate that. That is
17 certainly a point that Mr. Laurie may wish to mention to your
18 Lordship.

19 MR. JUSTICE SOOLE: I think I will re-list this for 3 o'clock on
20 Friday, but I cannot do it as my morning case may go over
21 because one of the parties is in America, as I say.

22 MISS STACEY: When would you want the amended particulars of claim
23 by?

24 MR. JUSTICE SOOLE: Including that as part of the, well,
25 10 o'clock on Friday.

1 STACEY KC

2 MISS STACEY: I am grateful. The notice of hearing, that would go
3 back to the point about there would need to be another order
4 so we can notify.

5 MR. JUSTICE SOOLE: I think what you need to have is a title of
6 the action as it is now.

7 MISS STACEY: Meaning with the, no, without joinder.

8 MR. JUSTICE SOOLE: The order has not been made. Literally:
9 "Upon the claimant's application dated 12 February 2024 and
10 upon hearing leading counsel for the claimant and the proposed
11 defendant Mr. Charles Philip Laurie in person, it is ordered
12 (1) the application is adjourned part heard to Friday,
13 15th March at 3 p.m. in the Royal Courts of Justice".
14 Paragraph (2) costs reserved.

15 MISS STACEY: Yes.

16 MR. JUSTICE SOOLE: The amended particulars of claim can simply be
17 sent to your clerk via the e-mail address we were provided
18 with. Could you send it to my clerk actually who is Mr. John
19 Lloyd L-L-O-Y-D and his e-mail address is
20 John.Lloyd@justice.gov.uk. He works from home on a Friday, it
21 would help me if you could send it by 4 o'clock on Thursday,
22 would that cause great difficulty?

23 MISS STACEY: We will have to make it work, you are being very
24 patient with us. 4 o'clock on Thursday.

25 MR. JUSTICE SOOLE: Mr. Laurie, subject to anything you want to

1 STACEY KC

2 say I am satisfied that the named defendants should be added
3 to the action. I do not think I should be making orders now
4 for a full trial. What is needed is a review hearing of the
5 interim injunction and as you have heard the date which I am
6 going to be ordering is the week commencing the -- remind me
7 of the week.

8 MR. LAURIE: 15th April.

9 MISS STACEY: Yes, 15th April.

10 MR. JUSTICE SOOLE: The week commencing 15th April for one and a
11 half days. I am making orders whereby any defendant who is
12 served has to acknowledge service by 4 p.m. on the 15th. It
13 is getting very close, is it not?

14 MISS STACEY: Yes, it is close to the hearing.

15 MR. JUSTICE SOOLE: 4 p.m. on the 12th might be a better date.

16 Anyhow, the important thing is you will be getting these
17 orders because you have e-mail addresses, you will be able to
18 see what those dates are.

19 MISS STACEY: Tuesday the 12th.

20 MR. LAURIE: That is the 12th.

21 MR. JUSTICE SOOLE: No, Friday 12th.

22 MR. LAURIE: Then the trial date will be set at the interim.

23 MR. JUSTICE SOOLE: The date will not be set at the interim, no,
24 but the directions will be given going towards a trial. It is
25 possible it would be. I cannot guarantee that I will do the

1 STACEY KC

2 April hearing but I will try to do so because of my
3 involvement in this hearing. I am adjourning this until
4 Friday 3 p.m. because I am not satisfied as to the form of the
5 final order. I think we are almost there. That is the first
6 thing but I want to see it in a full document so that I can go
7 through and be satisfied with it.

8 I also am going to consider whether to give the
9 claimants permission to re-amend their particulars of claim,
10 of which they are going to supply a draft. No doubt they will
11 supply you with a draft as well.

12 MR. LAURIE: I have got written down that we have to supply our
13 defence by 4 p.m. on 8th April, I do not quite ----

14 MR. JUSTICE SOOLE: No, 4 p.m. on 15th May.

15 MR. LAURIE: 15th May.

16 MR. JUSTICE SOOLE: I deliberately make that date as long as I can
17 so that it can be reviewed by the judge who hears the interim
18 notice application. So it has to be done before then. We
19 have said, your reference to the ----

20 MR. LAURIE: That is just outline defence, it is not detail.

21 MR. JUSTICE SOOLE: What the order will provide, this is what you
22 are referring to. The hearing in the week of 15th April is
23 about continuing the interim injunction.

24 MR. LAURIE: Yes.

25 MR. JUSTICE SOOLE: So you will not be serving a defence for that,

1 STACEY KC

2 but you have the opportunity to file and serve any evidence
3 you want to by the 8th April.

4 MR. LAURIE: Okay.

5 MR. JUSTICE SOOLE: To say anything you want to in evidence.

6 MR. LAURIE: That is not evidence for the final trial. That is
7 just evidence for the ----

8 MR. JUSTICE SOOLE: Yes.

9 MR. LAURIE: ----- interim hearing.

10 MR. JUSTICE SOOLE: Yes.

11 MR. LAURIE: It is just for the interim hearing.

12 MR. JUSTICE SOOLE: Yes.

13 MR. LAURIE: Okay, got you.

14 MR. JUSTICE SOOLE: It is not straightforward, is it? So, I am
15 joining the defendants, the named defendants. I am allowing
16 the claimants to amend their claim form in consequence so as
17 to add the named defendants. They then have to serve
18 re-amended particulars of claim. I am no going to allow that
19 until I have seen a draft and I am satisfied with it. That is
20 what I am going to consider again on Friday.

21 I am not ordering it to go straight to a trial in all
22 the circumstances, not least because of the timing involved.
23 There is going to be a review hearing in the week commencing
24 15th April. They have a date at which they have to put any
25 updating evidence in, any further evidence they want to, by

1 STACEY KC

2 this Friday, 15th March. The defendants have until Monday 8th
3 April 4 p.m. All timings are at 4 p.m.

4 The hearing will be in the week of the 15th April for a
5 day and a half. I am going to continue the injunction and the
6 judge then will make any further directions for trial, which
7 will include reviewing, if necessary, the date for the service
8 of the defence by anybody.

9 Can we do better than that at the moment?

10 MISS STACEY: No. The only question is whether I expressly
11 provide in the order that it may be reserved to your Lordship
12 if possible.

13 MR. JUSTICE SOOLE: Since I do the list, I will ----

14 MISS STACEY: Oh, I see.

15 MR. JUSTICE SOOLE: It is more helpful to me if I can just leave
16 it open but each week I get the next week's cases on a
17 Wednesday.

18 MISS STACEY: Right.

19 MR. JUSTICE SOOLE: I read them through and I have a list of
20 judges and I allocate. So I know exactly what is coming up.
21 I will not have forgotten this one.

22 MISS STACEY: No, no, I am sure. My Lord you have been extremely
23 patient.

24 MR. JUSTICE SOOLE: Not at all. I am sorry if I have perhaps had
25 moments of animation but simply I was wanting to be sure

1 STACEY KC

2 I knew what was ----

3 MISS STACEY: No, no, absolutely.

4 MR. JUSTICE SOOLE: Forgive me if I at any stage spoken in a way
5 that might be rather tart. These things are difficult to deal
6 with and they are complicated for claimants as well as
7 defendants.

8 MISS STACEY: They are.

9 MR. JUSTICE SOOLE: I am very conscious from doing a number of
10 these cases all the work that has to go into it. Whilst, on
11 the one hand I have to keep on remembering and protecting the
12 interest of unrepresented defendants, I am very conscious of
13 the work that goes in. I have seen this in the *National*
14 *Highways* case. I have seen it in *Balero*. I have seen it in
15 this one and others. So my anxiety has been to make sure that
16 we comply with rules, do not make things too complicated.

17 On the other hand we do not, I am afraid, make
18 concessions for the fact that it involves a large number of
19 people otherwise it end up in jeopardizing the interest of
20 individuals who ultimately are individuals facing these
21 claims. So I am very grateful for your work on this.

22 Very well, you will now draw up that order?

23 MISS STACEY: I will send it to the e-mail you provided me with.

24 I think, my Lord, you are going to provide me with another
25 one. I have John Lloyd. Is that sufficient?

STACEY KC

MR. JUSTICE SOOLE: John.lloyd@justice.gov.uk.

MISS STACEY: I have that.

MR. JUSTICE SOOLE: Can you also link... The Associate will give you an address.

MISS STACEY: I will provide you with the amended draft by 4 p.m. on Thursday.

MR. JUSTICE SOOLE: The quickest way of any document getting to me is to go to my clerk.

MISS STACEY: Thank you.

MR. JUSTICE SOOLE: Fridays are more difficult because he has to travel. Can I keep ----

MISS STACEY: The amended claim form?

MR. JUSTICE SOOLE: No, you need that.

MISS STACEY: No, no, you can keep that, my Lord. We have plenty.

MR. JUSTICE SOOLE: The amended particulars of claim.

MISS STACEY: You do not have the full amended claim form. Would you like the whole pack? The rest of it is ----

MR. JUSTICE SOOLE: I think it is sufficient that I have for the moment. That will be on the CE-File. I am not going to spend too much time looking at them.

As you are here, do take the opportunity if there is anything procedural you need to discuss between you.

MISS STACEY: Yes, before you rise my Lord, I think it is important for me to say that, Mr. Laurie, you made a point you

1 STACEY KC

2 wanted to draw to his Lordship's attention. Is that something

3 ----

4 MR. LAURIE: Yes, it is just it would be much easier if we can get
5 stuff by e-mail and a lot more accurate, I would suggest, in
6 this day and age for people. If you do send a letter out,
7 just put something saying, "Are you prepared to get it by
8 e-mail and provide an address for it". Then I would certainly
9 prefer to get everything by e-mail because I will get it and
10 right now I have a stack of documents about *that* big and I can
11 search e-mail and I can search through a document and do
12 things like that. It is just more ----

13 MR. JUSTICE SOOLE: I am sure the claimant would prefer it.

14 MISS STACEY: We would prefer that. Currently as it stands,
15 I have not drawn it up yet, in relation to named persons they
16 will be served by post or hand delivery. I think Mr. Laurie
17 is saying he would rather that did not happen in relation to
18 him.

19 MR. LAURIE: Yes.

20 MISS STACEY: We do have an e-mail address for him. We could
21 tweak the order to reflect his position.

22 MR. LAURIE: I am ----

23 MR. JUSTICE SOOLE: Do you have other e-mail addresses you could
24 use?

25 MISS STACEY: No.

1 STACEY KC

2 MR. JUSTICE SOOLE: I have made orders where everyone has been
3 served by e-mail. Indeed, I remember (having been rather keen
4 on personal service) having been told by one litigant in
5 person just like you, he interrupted me to say, "I am sorry,
6 we much rather have e-mails for all sorts of reasons including
7 ecological reasons". It is, as it were, those of us from
8 another age, I like preparing from hard copies, but that is
9 not the way of the world.

10 MISS STACEY: We have an e-mail address for Mr. Laurie but in
11 relation to the others we do not. I have included in
12 paragraph 22 and I suggest I include the wording which they
13 can apply to vary or discharge including if they wish to
14 receive by different means.

15 MR. JUSTICE SOOLE: Rather than varying or discharge, could there
16 not just be a provision to notify?

17 MISS STACEY: A provision to notify.

18 MR. JUSTICE SOOLE: There is no need to come back to court, I
19 would have thought, for that, if they are happy with that
20 form. It is a universal form of communication.

21 MISS STACEY: My Lord, I think I would have to come back to the
22 court as it is an alternative. It sounds silly, but at the
23 moment we are asking the court to endorse a specific method of
24 service. The method of service I am asking for is by post
25 because we do not have e-mail addresses for everyone. If we

1 STACEY KC

2 were notified by them subsequently that they wanted that ----

3 MR. JUSTICE SOOLE: Can I not endorse alternative service by
4 e-mail address if a defendant gives permission in writing to
5 the claimant?

6 MISS STACEY: Yes, by each ----

7 MR. JUSTICE SOOLE: There must have been some order in the past
8 made like that, is there not?

9 MISS STACEY: By posting copies to the last known address or if
10 notified.

11 MR. JUSTICE SOOLE: If previously so notified in writing.

12 MISS STACEY: To the e-mail address.

13 MR. JUSTICE SOOLE: It needs to be that they consent, the
14 defendant in question consents to being served by e-mail. The
15 mere fact they have given the e-mail address does not invoke
16 consent.

17 MISS STACEY: No, no, "and so notified and consented to, to the
18 e-mail address supplied by any individual named defendant".
19 Okay.

20 MR. JUSTICE SOOLE: If you can come on Friday so much the better.

21 MR. LAURIE: I will try to be here.

22 MR. JUSTICE SOOLE: Simply because you have taken an interest and
23 to have another point of view is very helpful for the court.

24 MISS STACEY: I am going to circulate an amended version of this,
25 the tracked changed documents so that we can work with it on

1 STACEY KC

2 Friday.

3 MR. JUSTICE SOOLE: Right. I would much rather have a clean
4 document.

5 MISS STACEY: Very well.

6 MR. JUSTICE SOOLE: If you want to send them in both forms, but I
7 must say I find working from a tracked document ----

8 MISS STACEY: Yes.

9 MR. JUSTICE SOOLE: Very well, three o'clock Friday in this court

10 ***(Adjourned till Friday 15th March at 3 p.m.)***

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 15 March 2024

BEFORE:

MR JUSTICE SOOLE

BETWEEN:

SHELL UK OIL PRODUCTS LIMITED

Claimant

- and -

PERSONS UNKNOWN

Defendants

MS M STACEY KC appeared on behalf of the Claimant
MR LAURIE and MS RUMBELOW appeared in person
The other defendants did not attend and were not represented

PROCEEDINGS

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

(15.05 pm)

MR JUSTICE SOOLE: Yes?

MS STACEY: My Lord, I hope that you will have received some documents from us?

MR JUSTICE SOOLE: Yes. I have received them. I am bound to say because of everything else I have been doing in court most of today and I could not yesterday after about 4 o'clock, I have not yet finished reading the draft order. So I thought the better course would be to walk through it.

MS STACEY: I can walk you through it.

MR JUSTICE SOOLE: But I also know that Mr Laurie, who is here again today, would like to raise some points.

MS STACEY: Would you be prepared to hear from me, first, my Lord, or Mr Laurie?

MR JUSTICE SOOLE: I think I would like to hear what the points are and then I will decide in what order I hear things, yes.

MR LAURIE: Thank you. I am sorry, I meant to bring it up on Monday, but I did not so I am bringing it up now. I thought it was a bit odd that, when you were asked to take out the word "environmental" from the document, I still think it is a bit odd. I would like to ask to have the -- because of these were environmental protestors and it is a bit hard to see why we should not have that term in the document. It does not seem to be too much to me, but I think we would like to be named as environmental protestors within the documentation if you do not mind.

MR JUSTICE SOOLE: I am afraid I am now forgetting where that point was. I remember something being said about that, I have now forgotten.

MS STACEY: If I can help. It was when we were looking at the claim form, my Lord, and we described it as a re-amended claim form. The first amendment was to take out the word "environmental" from the description of the persons unknown, and I explained to your Lordship that this was something that Hill J considered as part of the evidence before her and she dealt with it in her judgment. She was satisfied that on the evidence, whilst persons unknown protestors were environmental in the main, there was evidence that did not necessarily -- it was not limited to environmental protestors strictly speaking and extended to other spin-off protest groups and it is on that basis that she removed the limitation.

MR JUSTICE SOOLE: She wanted to enlarge the category that might --

MS STACEY: Indeed.

A MR LAURIE: Could we put "environmental and others" then or something like that, but we would like to keep the term environmental in there please.

MS STACEY: My Lord, this was considered expressly by Hill J. There was a KC and a junior before her at the time and it was debated before her. She was satisfied that it was appropriate to make the amendment.

B MR JUSTICE SOOLE: I think in fact the amendment has already been made, has it not actually?

MS STACEY: It has. That is not the amendment I am seeking. I am simply removing --

C MR JUSTICE SOOLE: That was already made in the last order.

MS STACEY: Indeed.

MR JUSTICE SOOLE: It just says "with protest campaigns", so it incorporates environmental and anybody who is not environmental.

D MR LAURIE: Okay. Well, there is a general move to try and take our motivations away from us and I think it is important, it is very important to me personally but I think it is important to all of us that we have that in. As I say, if you put "environmental and others" it would incorporate others and it would be the same thing, but it would enable us to be accurately identified, because that is our key motivation, that is why we do this.

E MR JUSTICE SOOLE: Yes.

F MR LAURIE: And it is kind of anonymising us to take it out. As I say, I was not here when the other debate was had, but now I think, and I cannot really see the reason why ... and I say, if it said "environment and others" it would broaden it out to include other spin-off groups. I am not quite sure what that might be. But it would do the same and it would enable us to be accurately identified within the document.

G MR JUSTICE SOOLE: Yes. That is the first point and the second point --

MR LAURIE: No, that was the point.

H MR JUSTICE SOOLE: I see. I am not going to take any further steps. That was decided by Hill J. Your point is very much noted. I think that has been dealt with by the decision of Hill J on the last occasion.

A MR LAURIE: There is now way we can just -- I mean, it does not seem to be a big thing and it seems to be within the power, you know, surely it is within the power of the court to put that in if we want to.

B MR JUSTICE SOOLE: It means me effectively putting it back in something that a judge at the same level has taken out after further argument. I understand the point you raise, but I am going to leave things as they are. But thank you for raising it.

MS RUMBELOW: Your Honour, could I ask some questions about the injunction?

MR JUSTICE SOOLE: Sorry, who are you?

C MS RUMBELOW: I am persons unknown I suppose, because this injunction applies to everybody in this whole country who has some problem with the criminal activity of Shell Limited.

MR JUSTICE SOOLE: Mr Laurie, if you would like to take a seat. Your name is?

D MS RUMBELOW: My name is Indigo Rumbelow and I am here on behalf of all persons unknown, which is you, your Honour, it is your family. It is everybody in this courtroom who has a problem with the way that Shell is acting here in this country and around the world, putting millions if not billions of lives at risk. I am asking you, your Honour, to show us that this really is a court of justice, because right now it is clear there are five people being paid above the odds to penalise people who are trying to stand up at this really crucial moment in time. You have a position where you could show that you can call this out for the criminal activity that it is.

F MR JUSTICE SOOLE: I am here deciding various directions for the future conduct of the trial. I am not deciding substantive questions today and on the hearing which began on Monday and had to be adjourned to today. I am simply making orders for the next stages of the case.

MS RUMBELOW: You are simply making orders.

MR JUSTICE SOOLE: Which is my job.

G MS RUMBELOW: Which is your job. And it is your duty to really consider what you are doing and whether you want to be on the side of big oil or if you want to be on the side ordinary people standing up for the future of humanity.

H MR JUSTICE SOOLE: Thank you for making your points and making them, if I may say so, eloquently. I am simply here as the judge seeking to do my best to apply

A the law as I understand it at every stage. But your point, and the strength of your feeling is noted, but all I can do today is conclude the questions of directions for the future conduct of this action. Thank you very much indeed and for putting it with courtesy as well.

MS RUMBELOW: Thank you.

B MS STACEY: My Lord, may I, having heard that, just put on the record it seems that there may be a misconception. Persons unknown from our side is not everyone who has an issue with Shell, it is those persons falling within the category and carrying out the unlawful acts which are prohibited by the order. I just wanted to put that on the record.

C MR JUSTICE SOOLE: I understand, and in a sense I was conscious of that point, but I was not going to, in the circumstances of litigation against persons unknown, albeit defined by a certain category, I was not going to stop Ms Rumbelow saying something if she wished to do so.

MS STACEY: No, no.

D MR JUSTICE SOOLE: But I understand the point that you make.

MS STACEY: Yes, and my clients would wish me to make it. My Lord, unless there are any other points from the defendants, I suggest that we take the order first and I walk you through the order and we pick up points as we go along.

E MR JUSTICE SOOLE: Yes. As I indicated on the last occasion, I consider that you are entitled to add the named defendants you wish to add to the claim. I told you that I was not with you on the basis of there being an early full trial of the actions because that did not give enough time for people to prepare themselves.

F MS STACEY: Yes.

MR JUSTICE SOOLE: What the next stage was needed with the present injunction expiring on, I think, 12 May --

MS STACEY: 12 May, my Lord, yes.

G MR JUSTICE SOOLE: -- was to have a further interim hearing to consider, in the language of the law, to review the continuance of that injunction.

MS STACEY: Yes.

MR JUSTICE SOOLE: And then to give some directions at this stage towards a final trial, but any further directions to be given at the conclusion of that hearing.

H MS STACEY: Yes, my Lord, and that is what this order provides for.

MR JUSTICE SOOLE: That is what I am dealing with now, this afternoon.

MS STACEY: Yes. Do you have the draft order?

MR JUSTICE SOOLE: Yes. What I am doing is I am holding up the second draft you provided for me in the light of discussions on the last occasion and the --

MS STACEY: Which has been served on all the named defendants.

MR JUSTICE SOOLE: No, no, I do not mean the order I made adjourning the application, I mean when you came to court on Monday, you had a draft order. I raised a number of questions about the form of the order. You then, by 2 o'clock, had produced a proposed revised version, which I then raised further questions about, and then we had to adjourn. Then yesterday as requested, you supplied, before 4 o'clock, which was the time I requested, a yet further version of the draft order. I now have in front of me, because I find it the simplest way to deal with it. The draft order you supplied yesterday and the one that you supplied to me on Monday afternoon.

MS STACEY: I see, yes.

MR JUSTICE SOOLE: So that I can see what changes have been made.

MS STACEY: The changes, I see.

MR JUSTICE SOOLE: And how they have been incorporated.

MS STACEY: I did not provide your Lordship with a tracked version because it was getting rather messy and you expressed a preference for a clean copy.

MR JUSTICE SOOLE: Yes, exactly. That is what I wanted and I am grateful.

MS STACEY: Shall I take your Lordship through it from the top.

MR LAURIE: Excuse me, I do not have a copy.

MS STACEY: It was sent.

MR LAURIE: I did get it but I do not have it with me.

MS STACEY: We have a hard copy that we can hand to Mr Laurie. **(Handed)**

My Lord, if you see on the front sheet we have added the names of 15 defendants and we have taken out the word "proposed".

MR JUSTICE SOOLE: Is that what your front sheet looks like?

MS STACEY: It does, yes.

MR JUSTICE SOOLE: So top left, underneath King's Bench Division, could you put Mr Justice Soole?

MS STACEY: Yes.

MR JUSTICE SOOLE: You then have three sets of persons unknown and the third one has something called "Proposed first defendant".

MS STACEY: That needs to come out, quite right. Sorry, I did not spot that.

MR JUSTICE SOOLE: That should say "First defendant". The word "proposed" should come out there.

MS STACEY: It should simply be first defendant, yes. Then the second defendant through to 15th --

MR JUSTICE SOOLE: Can you remove the various little words on the bottom left.

MS STACEY: Yes, I am sure that can be done.

MR JUSTICE SOOLE: Cloud UK, sort of thing. That is not meant to be on that.

MS STACEY: We have removed Mr Gingell.

MR JUSTICE SOOLE: You have removed Mr Gingell who gave the undertaking.

MS STACEY: Yes.

MR JUSTICE SOOLE: Could you move "Upon the claimant's application dated 12 February" as the first recital.

MS STACEY: Yes.

MR JUSTICE SOOLE: Do we actually need to have a recital of all those orders?

MS STACEY: Not necessarily, my Lord.

MR JUSTICE SOOLE: Can you cross that out and just put "and upon hearing leading counsel for the claimant and the proposed ..."

MS STACEY: Eighth.

MR JUSTICE SOOLE: Well, "and the proposed defendant Mr Charles Phillip Laurie in person".

MS STACEY: Yes.

MR JUSTICE SOOLE: "It is ordered", cross out "that". Now, I would like you to walk me through the order.

MS STACEY: I will do that. So paragraph 1, my Lord, is the schedule of named defendants. That has been amended. It is right at the back you should have an appendix. Or I think it is actually sent in a separate attachment.

MR JUSTICE SOOLE: I have Schedule 1 here.

MS STACEY: Yes, and it should have the deemed defendants on it with Mr Gingell removed.

MR JUSTICE SOOLE: Yes.

A MS STACEY: That is paragraph 1. Paragraph 2 is the Reamended Claim Form and Particulars of Claim, which is a consequence of the joinder, so my Lord, you were sent two attachments. If we can deal with the claim form first.

MR JUSTICE SOOLE: Does Mr Laurie have a copy of that?

B MS STACEY: I do not know whether he needs hard copies. If he does, we can provide them to him. The reamendment to the claim form contains reference to, at the top you will see "Reamended pursuant to order", because you made that -- well, you have not made any order yet, but it is dated 15 March.

MR JUSTICE SOOLE: Yes.

MS STACEY: Then the amendments in green.

C MR JUSTICE SOOLE: So you will remove the square brackets?

MS STACEY: Yes.

D MR JUSTICE SOOLE: And then the amendments in green, I do not have colours here, but add a number 1 before "Persons unknown", and then 2, Louis McKechnie and 13 others as set out in the attached schedule 1.

MS STACEY: Exactly.

MR JUSTICE SOOLE: And that is the same schedule again with names.

MS STACEY: With the 15 defendants, yes.

MR JUSTICE SOOLE: I see it in a separate document there, yes.

E MS STACEY: Then the second part of paragraph 2 deals with the proposed reamended particulars of claim, which pleads the case or the cause of action in relation to the individual defendants. You have been sent a draft of that proposed re-amended particulars of claim, with the amendments again shown in green. I do not know whether yours is coloured.

F MR JUSTICE SOOLE: Not on my printout, but anyhow.

MS STACEY: I can tell you what they are. So on the front page you see the word "first" inserted before defendant, after the descript of persons unknown.

MR JUSTICE SOOLE: Yes, yes.

G MS STACEY: Then you have the new defendants inserted there. We then in the heading have reference to "Reamended Particulars of Claim by order of Soole J dated ...", and we need to insert the date.

H MR JUSTICE SOOLE: Yes.

A MS STACEY: The next amendment is paragraph 1.4, second line down, after "restrained by this court", you will see the words "the defendants", deleted "persons unknown".

MR JUSTICE SOOLE: Because defendants includes persons unknown within the identified category.

B MS STACEY: Exactly. Then after "by agreement with others" we have inserted the words "which involve the interference with rights to the site, goods and/or equipment used for the dispensing of the claimant's fuel", just to make it clear what the conspiracy is alleged to be.

Paragraph 2.1, after the words "groups of protestors", we have added the words "which include the 2nd to 6th defendants". This is the incident on 28 April.

C MR JUSTICE SOOLE: All right.

MS STACEY: And then we have added the words after "protest campaign", acting collectively in a coordinated campaign.

D MR JUSTICE SOOLE: Yes.

MS STACEY: At 2.2, after the words "actions of the", we have added "1st to 6th defendants" and deleted "protestors".

MR JUSTICE SOOLE: Yes.

E MS STACEY: Then at 2.2.3, because of the information we have from the police, we have added the word "wilful" in front of "blocking", "access of the highway". Then after the word "to", we have put in "persons engaged in lawful activities", and then the words "and causing a public nuisance".

MR JUSTICE SOOLE: Yes.

F MS STACEY: At 2.3, we have inserted reference to the 1st and the 2nd to 6th defendants, and that paragraph sets out what we say happened on that day. 2.4, my Lord, is a new paragraph that is in its entirety, so it is all green, and it sets out in relation to each of these --

G MR JUSTICE SOOLE: I am glad I asked for a document because this is much more substantial than you were suggesting on the last occasion.

H MS STACEY: My Lord, yes. We have particularised, in as much detail as possible, based on the information we have been provided, the individual allegations against each of the 15 defendants. So 2.4 is the Cobham incident on 28 April.

MR JUSTICE SOOLE: So you have there set out what you say are the individual allegations against the 2nd to 6th defendants.

MS STACEY: Yes, what the unlawful acts are said to be, yes.

MR JUSTICE SOOLE: Yes.

MS STACEY: 2.5 deals with the incident on 24 August, which is concerned with the 7th to 10th defendants and the individual acts are set out at 2.6.

MR LAURIE: Well --

MR JUSTICE SOOLE: I think it is easier -- if it is a short point?

MR LAURIE: There is a factual inaccuracy.

MR JUSTICE SOOLE: That will be a matter for a defence to put in. But do you want to make the point now.

MR LAURIE: So the charges -- I am the 8th defendant and the charges they put in there are not the charges that I have been charged with.

MR JUSTICE SOOLE: Which paragraph are you looking at?

MS STACEY: 2.6.2, my Lord. It is "arrested".

MR JUSTICE SOOLE: That says "was arrested for", not what the charges are.

MR LAURIE: Okay.

MS STACEY: We have prefaced it with "according to information provided to us by Surrey Police". So 2.6, my Lord, sets out --

MR JUSTICE SOOLE: This is what they, the claimant, are saying. If they have something wrong you will have every opportunity in due course to --

MR LAURIE: It is not where it stands at the moment. That is what I am saying.

MR JUSTICE SOOLE: I do understand that. Yes?

MS STACEY: And 2.7 perhaps pre-empts Mr Laurie's point, because it refers to the current position. It is a new paragraph, "were arrested, were granted conditional bail pending further investigation, were released under investigation, further understand a trial date has been set". This is all based on our understanding, my Lord, setting out what we believe to be the current position in relation to those particular defendants.

MR JUSTICE SOOLE: Yes.

MS STACEY: 2.8 is the third incident at Acton which relates to the 11th to 15th defendants. So we have inserted reference to them specifically. The last five lines are new, starting "The 1st defendant and the 11th, 12th, 13th, 14th and 15th",

A down to "loss and damage" is an insertion. 2.9 is a new paragraph which again sets out the specific allegations against each of those particular defendants. We do not have the information to enable us to -- and we include in brackets "no further action was taken in circumstances where operators of the site failed to supply details of the cost of damage caused" at the end of 2.9.

B 2.10, my Lord, there are some cross-references. We have added references to the new paragraphs on the first line, 2.4, 2.6, 2.9, and refer to it being a coordinated action by a group of people which included the 2nd to 15th defendants specifically, four lines from the bottom.

C The next amendment is at 3.1, the second line down, we deleted the "persons unknown" and replaced it with defendants. Then 3.6 we have pleaded why we anticipate or why we say there remains --

MR JUSTICE SOOLE: There is no amendment between 3.1 and 3.6?

D MS STACEY: No. 3.1 and 3.6, no amendments because that deals with the position vis-à-vis the first defendant. 3.6 pleads the basis upon which we say there remains a real and imminent risk in relation to the named defendants. What that is essentially doing is pleading the undertaking, or them having been identified, the undertaking having been offered and no undertaking having been given. At 3.7 we draw the threads together.

E MR JUSTICE SOOLE: As the basis of a claim for a final precautionary injunction?

MS STACEY: Exactly. The only other amendment is at 3.9, my Lord, the insertion --

MR JUSTICE SOOLE: The document I have has not been signed or dated?

F MS STACEY: No, because we have not yet -- I can refer you to the order. We have made provision for that to happen.

MR JUSTICE SOOLE: Right, okay.

G MS STACEY: So 3.9, I just need to draw your attention to the only other amendment, which is just before the subparagraph you see the words "carrying out" before "any of the following acts", that has simply been inserted because it did not scan properly. Those words were missing.

MR JUSTICE SOOLE: Yes, it is grammatical.

H MS STACEY: Grammatically inaccurate. Then the statement in truth inserts "re" in front of "amended" in green.

A My Lord, the way we deal with this in the order is, if I can ask you to turn back to paragraph 2, paragraph 2 is the provision giving permission. Paragraph 3 sets out that the amendments shall be, and in a sense this might be superfluous given that you have already been shown the document, but we set out there what it should look like in accordance with the practice direction, and then 4, is your Lordship's point about it being verified by a statement of truth and copies being filed and served in accordance with paragraphs which then follow.

B MR JUSTICE SOOLE: What is the position about the sealing of a reamended claim form as opposed to -- one does not seal a particulars of claim.

MS STACEY: No.

C MR JUSTICE SOOLE: But what about the claim form?

MS STACEY: My Lord, we could not find anything in relation to that. If it is going to be sealed, then we will wait for it to be sealed before serving. It may be that your Lordship can --

D MR JUSTICE SOOLE: We discussed this before. What is the position?

MS STACEY: The reason we have made provision for it to be unsealed is that we need to serve it before the 22nd and we do not want to be held up by judicial administration. If it can be sealed quickly, then that is not a problem. But obviously we need to serve it as soon as we possibly can.

E MR JUSTICE SOOLE: What is the requirement? A claim form is sealed, but does an amended -- I think your amended claim form was --

MS STACEY: It was.

MR JUSTICE SOOLE: -- sealed, was it not?

F MS STACEY: It was, yes.

MR JUSTICE SOOLE: So on what basis is that? **(Pause)** Is it CPR 2.6, page 42?

MS STACEY: "... must seal the following documents ..."

G MR JUSTICE SOOLE: "The court must seal the following documents on issue - (a) the claim form; and (b) any other document which a rule or practice direction requires it to seal."

MS STACEY: I suppose the question, my Lord, is whether we need to await the sealing of it before serving.

H MR JUSTICE SOOLE: No, but does an amended claim form need to be sealed?

A MS STACEY: According to 2.6, I think that would encompass an amended claim form, my Lord, yes, because it is still a claim form. So it would need to be sealed, but it has been issued already. My Lord, I would suggest that it is not entirely clear.

MR JUSTICE SOOLE: When you say it has been issued ...

MS STACEY: The claim form itself has been issued and the claim has been issued. It is an amendment of the existing claim form which has already been sealed.

B MR JUSTICE SOOLE: That is my question. What is the requirement if it has been issued, and if you add a new defendant or an additional cause of action --

C MS STACEY: Whether it needs to be resealed. That is what I am afraid, my Lord, could not find. I could not find any provision that says if you amend a claim form it has to be reissued on each occasion that it is amended. This claim form has been sealed obviously once ... twice.

MR JUSTICE SOOLE: Twice.

MS STACEY: Yes.

D MR JUSTICE SOOLE: What happened on the occasion that it was --

MS STACEY: It was sealed by the court.

MR JUSTICE SOOLE: Did you ask for it to be sealed.

E MS STACEY: We certainly did not ask for it to be resealed. It came out from the court in that way. We found authority that apparently it does not need to be resealed prior to service.

MR JUSTICE SOOLE: What is the authority for that?

MS STACEY: *Denton v White* [2014]. My Lord, it is *Hills Contractors & Construction v Struth* [2013] EWHC 1693 (TCC).

F MR JUSTICE SOOLE: Is it referred to in the White Book?

MS STACEY: My solicitor just pulled it up.

MR JUSTICE SOOLE: I would like to see it if it is a decision that is going to be relied on.

MS STACEY: Yes, 6.23.

G MR JUSTICE SOOLE: The paragraph of the White Book?

MS STACEY: Of the CPR, 6.23, my Lord, it does not specifically refer to the point. 6.32 it was also --

H MR JUSTICE SOOLE: I cannot see where it says --

MS STACEY: No, I agree. It is 6.32, "Service of original seal claim form generally required ...", 6.32. **(Pause)**

MR JUSTICE SOOLE: These are all to do with service of documents.

MS STACEY: They are.

MR JUSTICE SOOLE: Where have you got this *Denton* from? Is that *the Denton*?

MS STACEY: Yes. *Denton* is not the accurate authority, my Lord. It is not the right authority. Can I ask you to just turn to 7.5.1 just to see if it helps. It again refers to service of a claim form. **(Pause)** Which does not specifically deal with the point about amendment.

MR JUSTICE SOOLE: If one looks at 7.5.1, talking about the original claim form, it says halfway down on page 369, "It should be noted that what must be served is a sealed claim form not an unsealed one, re-emphasised in *Ideal Shopping*."

MS STACEY: Yes.

MR JUSTICE SOOLE: Now, if you are adding a new party, it is as if you had a fresh claim form against that person, is it not? I cannot see the difference in substance between ... in the absence of an authority to show that it does not --

MS STACEY: No, I understand that, my Lord.

MR JUSTICE SOOLE: -- need to be sealed, I am afraid my approach at the moment is that the word "claim form" in 2.6 is, as I think as you, as it were, initially acknowledged, to include --

MS STACEY: Does your Lordship have any sense of how quickly that can happen?

MR JUSTICE SOOLE: No.

MS STACEY: It is much the same to us. We obviously want to do it properly, but it is just the timing --

MR JUSTICE SOOLE: Documents are sealed remarkably quickly and I have sometimes had to correct documents when I had realised I had made a mistake and they have already been sealed, even though they only went out from me minutes before and I have had to amend them under the slip rule. But again, as I have said in this and other litigation, rules have to be complied with and if it is the rule that an amended claim form has to be ... unless there is some sort of dire emergency which might allow the court -- I cannot see what it would be, but I think it is a matter of substantive procedural law -- I do not think the matter of time, there does not seem to be any urgency.

MS STACEY: No, it is simply to meet the dates. We will go to the directions. You will see which dates we have in mind.

MR JUSTICE SOOLE: Well, the dates may have to be postponed.

MS STACEY: My Lord, we are not trying --

MR JUSTICE SOOLE: For all I know there is an authority somewhere saying if it is amended, I am a bit surprised, certainly one where you are adding defendants, I suppose, if you are just adding a slightly different cause of action and you were putting a breach of contract as well as tort, for example, one might, but how one makes those distinctions I do not know. It is no more than instinct, but if you are adding a new defendant, I would expect it to be a sealed document.

MS STACEY: My Lord, as a matter of principle I have to say I am with you. I just could not find an answer just by having looked for one.

MR JUSTICE SOOLE: No. Well, yes, there has been the time so I think for that purpose then, which draft am I looking at now?

MS STACEY: So we were at paragraph 4.

MR JUSTICE SOOLE: It is the previous draft order.

MS STACEY: Paragraph 4.

MR JUSTICE SOOLE: I am going to cross out in paragraph 4 "(which need not be sealed)", for two different reasons, one because of what we have just been discussing, but also re-amended particulars of claim do not need to be sealed.

MS STACEY: No, no, quite.

MR JUSTICE SOOLE: Right.

MS STACEY: In paragraph 4, my Lord, we are inserting the word "sealed" are we?

MR JUSTICE SOOLE: No, I am just crossing out "(which need not be sealed copies)".

MS STACEY: Yes, so we will keep it --

MR JUSTICE SOOLE: And if you want to serve something ...

MS STACEY: Yes, fine, my Lord, thank you. Paragraph 5 then is the definition of application documents which we discussed last time around.

MR JUSTICE SOOLE: This is serving the application for today's matters, sorry, for Monday's and today's. Well, Monday's, yes.

MS STACEY: Yes.

MR JUSTICE SOOLE: Today is just an adjournment.

A MS STACEY: We have dealt with today in "future documents" category, we will come on to that in a moment, just so it covers everything. Paragraph 6, if there are steps already taken, so the retrospective endorsement --

MR JUSTICE SOOLE: Let me just go through 5 again. That is unchanged.

B MS STACEY: That is unchanged. Well, it is unchanged ... I think the word "which together comprise the hearing bundle" have been added, but it is substantively unchanged.

MR JUSTICE SOOLE: Yes.

C MS STACEY: So then paragraph 6 is the good service retrospective endorsement of the steps already taken, which again is unchanged. So the copies that were post ... you were taken to the evidence on Monday, my Lord.

MR JUSTICE SOOLE: Yes.

D MS STACEY: The Facebook account for the third defendant. I do not know why 6.3 has gone out of sequence but I will bring that back in, and that is the 10th defendant's social media account.

MR JUSTICE SOOLE: What has gone out of sequence?

MS STACEY: 6 on my version, 6.3 is just out of line. So I will bring that in so it is in line.

MR JUSTICE SOOLE: I see, it goes in, yes.

E MS STACEY: It needs to be indented.

MR JUSTICE SOOLE: So indent 6.3.

F MS STACEY: Yes, indent 6.3. Then paragraph 7 is dealing with future documents, my Lord. So, we had specifically listed this order, the reamended claim form, the reamended particulars of claim and the seventh witness statement of Ms Oldfield, which I think was sent to you last night. What that does is confirm service of the documents since Monday.

MR JUSTICE SOOLE: Yes. I have read that.

G MS STACEY: So "those documents and any further document in these proceedings upon the named defendants, save for 15 to whom paragraph 8 applies." I will come to him. That was, you will recall, Mr Holland, Samuel Holland.

MR JUSTICE SOOLE: Yes.

H MS STACEY: "... shall be validly effected by ..." and what this does is replicate the McGowan order, so we have the email address, the notices, plus you have copies

posted to the last known addresses supplied by the police. That is 7.3. Then you have in 7.4 and 7.5 --

A

MR JUSTICE SOOLE: 7.3 was "and as set out in Schedule 1".

MS STACEY: Yes.

MR JUSTICE SOOLE: What is that about? That is a list of names?

MS STACEY: That is the list of addresses, my Lord, Schedule 1.

B

MR JUSTICE SOOLE: But the addresses will not be in the order, will they?

MS STACEY: We wanted you to see them for the purpose ... but we are going to be serving redacted versions.

MR JUSTICE SOOLE: Does the order provide for that?

C

MS STACEY: I can insert "redacted", "any copies set out in the redacted copy of Schedule 1"?

MR JUSTICE SOOLE: What is the language you have used in previous successful applications?

D

MS STACEY: The names and addresses will be redacted on the version which is to be served -- sorry, not the names, the addresses will be redacted. But this is simply specifying the method of service as opposed to identifying what is to be served.

MR JUSTICE SOOLE: We do not have any provision for a redaction, have we?

MS STACEY: No, we have not included a provision for redaction.

E

MR JUSTICE SOOLE: But it has always been the case that they have been redacted, the addresses?

MS STACEY: Yes, for data protection reasons.

MR JUSTICE SOOLE: Yes, and generally.

F

MS STACEY: But we have not included express provision for redaction. But the only place we are going to have ... I suppose if this order is going to be served as part of the future documents, we could provide that "This order and this Schedule (the addresses on which are to be redacted)", I could include that in paragraph 7, where it says, "Service of this order ..."

G

MR JUSTICE SOOLE: What are the words?

MS STACEY: "Service of this order and the accompanying schedule ..."

MR JUSTICE SOOLE: I am on 7.3.

MS STACEY: Go back to 7, my Lord, which tells you which documents we are talking about. You will see the words "this order".

H

MR JUSTICE SOOLE: Yes.

A MS STACEY: I suggest we put in brackets after "this order", "(and the accompanying schedule)" --

MR JUSTICE SOOLE: The order includes the schedule.

MS STACEY: Okay, "This order (with the addresses redacted)"?

MR JUSTICE SOOLE: Paragraph 7 is how it shall be effected.

B MS STACEY: Yes, but that is what is needing to be served. So we are going to serve a redacted version of the order.

MR JUSTICE SOOLE: What is going to happen to the words in brackets in 7.3?

MS STACEY: That does not matter, my Lord, because the addresses will not be there.

C Where the order has a schedule showing black, those are redactions and that is consistent with the order. If anything, it explains why there are blackened out bits in the schedule.

MR JUSTICE SOOLE: Right, start again. What words do you want?

D MS STACEY: I suggest at the top of 7, "Pursuant to CPR 6.15 and 6.27, service of this order (with the addresses redacted), the reamended claim form" --

MR JUSTICE SOOLE: "(with the ...)" --

MS STACEY: "... in the schedule redacted)".

MR JUSTICE SOOLE: With the addresses in Schedule 1.

E MS STACEY: "... in Schedule 1 redacted)". Then back to 7.3, we post those.

MR JUSTICE SOOLE: Then I think you could say "and as set out in the unredacted schedule".

MS STACEY: Yes, okay. And 7.4 and 7.5 are the social media links.

F MR JUSTICE SOOLE: Yes.

G MS STACEY: So paragraph 8 is Mr Holland's position. You will recall that I took you to Ms Oldfield's fifth witness statement which dealt with his position, namely that it has come to our attention he no longer resides at the address given to us by the police. We have no social media account for him. Therefore, we suggested to your Lordship that he should be placed in the same category as persons unknown. What this paragraph does is provide in relation to him that this order may include the same wording about "redaction, the claim form, particulars of claim, and a witness statement, and any further document on the 15th defendant shall be validly effected by ..." --

H

MR JUSTICE SOOLE: Wait a minute, I am just writing "with the addresses in Schedule 1 redacted" --

MS STACEY: "shall be validly effected by service in accordance with paragraph ..." --

MR JUSTICE SOOLE: Upon *the* 15th defendant.

MS STACEY: "Upon *the* 15th defendant in accordance with 7.1 and 7.2, unless and until we are notified of an address, whereupon service on him shall be effected in accordance with all three paragraphs.

MR JUSTICE SOOLE: Just going back to sealing in paragraph 7, the order will be sealed, will it not?

MS STACEY: The order will be sealed, yes.

MR JUSTICE SOOLE: And the reamended claim form will be sealed.

MS STACEY: Yes.

MR JUSTICE SOOLE: One does not need to spell out the sealing provisions in an order.

MS STACEY: No, no.

MR JUSTICE SOOLE: You just have to comply with them.

MS STACEY: While we are at it, my Lord, sorry, I should have drawn your attention, at 7.3 there is a bit in brackets to deal with email addresses. You will recall that we had an exchange right at the end of Monday's hearing about the possibility of serving by email.

MR JUSTICE SOOLE: Yes.

MS STACEY: And we had inserted the words you see there in brackets at the end of 7.3 to deal with that.

MR JUSTICE SOOLE: "Or by sending copies to the email address which has previously been supplied to the claimant by any named defendant for the purpose of electronic service and at which the named defendant has notified the claimant in writing that they wish to be served." Yes, that is because, I think, Mr Laurie, as other predecessors in these actions have said, they would much rather have it by email than by personal service at their property or elsewhere.

MS STACEY: Indeed. So I think that caters for that.

MR JUSTICE SOOLE: Yes.

A MS STACEY: Paragraph 8 then I have taken you to. Paragraph 9 then are the specific requirements of 6.15. 9.1 deals with the verification by a certificate of service or by a witness statement verified by a statement of truth.

MR JUSTICE SOOLE: Yes.

MS STACEY: 9.2 is the date on which it should be deemed effective.

MR JUSTICE SOOLE: Yes.

B MS STACEY: 9.3 provides that it should be done in accordance with the order be good and sufficient service. Then 10 deals with the requirements for specifying the date by which an acknowledgement of service, admission or defence should be filed. That is cross-referred to the directions below, which are paragraph 15 is the acknowledgement of service.

C MR JUSTICE SOOLE: And 16, yes.

MS STACEY: And 16 is the defence date. 11, we then come into the directions. The first direction was that we file updated evidence. Permission is at the top.

D MR JUSTICE SOOLE: Where are the dates for service of the reamended claim form and so on?

MS STACEY: That is coming.

MR JUSTICE SOOLE: That is coming, all right.

MS STACEY: I have done it in chronological order.

E MR JUSTICE SOOLE: No, I see.

MS STACEY: So 11 is we update our evidence by the 19th. I did say we would do it by today, but my comment, I think you will have seen, you will have had a version with a comment on it. My comment was --

F MR JUSTICE SOOLE: Tell me, I do not think I have seen it.

G MS STACEY: Did you not. My comment was, my Lord, that we had not accounted for the photocopying required and therefore we needed that extra time. So we are asking for the 19th. When I rather optimistically said it would be done by the end of this week, we had not accounted for the fact that we would need to physically photocopy all the documents because at the moment we need to serve by post. We do not have the email addresses for the vast majority of these named defendants. So that is why the date is not the 15th it is the 19th.

H MR JUSTICE SOOLE: Very well. So remove the square brackets, yes.

MS STACEY: We can remove the square brackets if you are content. Service copies of the amended claim form by 4 pm on 22 March.

MR JUSTICE SOOLE: Which is next Friday.

MS STACEY: Which is next Friday. Paragraph 13, reamended particulars of claim by 28 March and that is because I think the 29th is a bank holiday.

MR JUSTICE SOOLE: Why not the same time as the reamended claim form?

MS STACEY: They can be. So we could actually merge 12 and 13.

MR JUSTICE SOOLE: Can you merge 12 and 13.

MS STACEY: Yes. Then the defendants at paragraph 14, evidence by 8 April. So they would have had our evidence on 19 March and the reamended particulars of claim by 22 March.

MR JUSTICE SOOLE: We went through these dates, did we not?

MS STACEY: We did.

MR JUSTICE SOOLE: Because it is all tied in with getting a hearing before the present injunction expires.

MS STACEY: We have adopted the dates we discussed, yes; 12 April is the date that we have landed on on Monday.

MR JUSTICE SOOLE: Yes, but that was -- you said the 19th for your evidence. As there is going to be a bit of a delay in yours, two or three days should we not reflect that also in the time for a response.

MS STACEY: Save that you will recall that the hearing was going to be listed, look at paragraph 17, in the week commencing 15 April. So we are butting up against it.

MR JUSTICE SOOLE: I am conscious though of Easter and so on. Why do we have it as early as that? Why did we have it as early as 18 April? Obviously we have 12 May date in our minds.

MS STACEY: Yes.

MR JUSTICE SOOLE: Which is a Sunday actually.

MS STACEY: Sorry, what was your Lordship's question? Why do we have ...?

MR JUSTICE SOOLE: Why did we have it as early as the week of the 15th?

MS STACEY: Because of, you will recall, the service -- all the petrol stations, it takes two weeks to repost all the notices, nationwide, because we rely on third party contractors in order to do that for us and it takes time.

MR JUSTICE SOOLE: That would take you from ... depending on where it was, it could take you to the 3rd.

MS RUMBELOW: It is against the order to sticker the petrol stations now.

MR JUSTICE SOOLE: I am sorry?

MS RUMBELOW: I think it actually against the order to be stickering on petrol stations.

MS STACEY: Not for the claimant to do so.

MR JUSTICE SOOLE: If we put it to 10 April rather than the 8th, that would be by the Wednesday.

MS STACEY: Yes.

MR JUSTICE SOOLE: You can make the 10th.

MS STACEY: Yes, thank you. Then 16 it is the defence --

MR JUSTICE SOOLE: What about 15?

MS STACEY: Sorry, 15, then that is 12 April.

MR JUSTICE SOOLE: Acknowledgement of service.

MS STACEY: Acknowledgement of service, and then 16 is the defence and the only reason 16 is in there, it is going to be after the review hearing.

MR JUSTICE SOOLE: That is right until 15 May.

MS STACEY: Yes. And the reason that is there is in order to make sure this order is compliant with a 6.15.4.

MR JUSTICE SOOLE: Yes.

MS STACEY: So that is the purpose of this provision. 17 is listing for a hearing in the week commencing 15 April with a time estimate of one-and-a-half days. I have included in that paragraph, my Lord, the purpose of the hearing.

MR JUSTICE SOOLE: "In the week commencing 15 April 2024 (but not Monday, 15 April)." That is in order to give reading time.

MS STACEY: Yes. I have said "for a review of the interim injunctions (at which the court will consider whether the interim injunction is granted ... or should be continued pending trial." Just so it is clear. And for directions.

MR JUSTICE SOOLE: I know we discussed this last time, it went from a day to a day-and-a-half. These things --

MS STACEY: There are three claims. The possibility that -- this is a directions hearing. It is more likely --

MR JUSTICE SOOLE: I think that is the right course. I think that is the right course.

MS STACEY: My Lord, can I flag one point in relation to this paragraph. We are proceeding on the basis --

MR JUSTICE SOOLE: Sorry, can you have any conversations outside. Thank you.

MS STACEY: We obviously were seeking directions as well. We have not issued an application notice for an extension of the existing injunctions. Obviously, we are going to be listed for a review. That is the purpose of the hearing. We are proceeding on the basis that we do not need to issue a separate application for an order.

MR JUSTICE SOOLE: Do not look to me for advice.

MS STACEY: No, no, my Lord, no, but given that this hearing has been listed, if we need to do that, my Lord, we can undertake and make provision in the directions for that, but we have not done so.

MR JUSTICE SOOLE: I thought your application --

MS STACEY: It is for directions. The joinder directions for trial.

MR JUSTICE SOOLE: I thought you had it in the alternative.

MS STACEY: Page 4. Certainly in our evidence we flagged the possibility of a continuation being required, it is paragraph 6.7 of Ms Oldfield's statement she said that we might need a short continuation. What I suggest, my Lord --

MR JUSTICE SOOLE: I take the view that --

MS STACEY: It is --

MR JUSTICE SOOLE: -- it is -- subject to anyone who wanted to argue otherwise -- but my view is that if the court considers it is appropriate to have a review and so orders, that is what is going to happen next.

MS STACEY: It is part of the directions. That is the view I take, so I do not know whether we need to expressly dispense with any need to serve any further application in relation to that hearing or we can just proceed on the basis that that is what has happened. I was rather taking the latter view, but I just want to be as cautious as I --

MR JUSTICE SOOLE: Again, I am being drawn into the advisory position.

MS STACEY: Can I say for which purpose any further application in relation to such a review is dispensed with, or for which purpose no further application shall be required? **(Pause)**

MR JUSTICE SOOLE: I am going to leave it as it is.

MS STACEY: Fine. 18, skeleton arguments.

MR JUSTICE SOOLE: Yes.

MS STACEY: 19, the bundles being filed. We have adopted your Lordship's wording in parenthesis. Then 20, my Lord, is the provision which one saw in Hill J's order, just regularising how applications should be made. So 20 deals with named defendants, if they fail to comply with 14 or 15, those are the paragraphs dealing with evidence and acknowledgement, they need to apply.

MR JUSTICE SOOLE: Yes.

MS STACEY: And 20 is any other person. So that includes the first defendant or any interested person. It is substantively the same, except that it provides at the bottom that any such person should provide their full name and address and apply to be joined if appropriate.

MR JUSTICE SOOLE: Yes.

MS STACEY: 22 is then replicating the service, alternative service provisions against persons unknown. I will insert the wording about redactions after "this order" at paragraph 22.

MR JUSTICE SOOLE: Yes. You may have to check on the numbering, when you are referring back to any --

MS STACEY: Because I have merged some paragraphs, you are quite right.

MR JUSTICE SOOLE: You merged paragraphs 12 and 13. Sometimes it is easier not to merge them frankly.

MS STACEY: It would be easier not to merge them. In fact, would you be content if I did, I just simply have 12 and 13 separately but have the same dates.

MR JUSTICE SOOLE: Yes. I think it saves -- because it is almost guaranteed that one does not then spot some other number that needs to be varied.

MS STACEY: Exactly, and we have been very careful in going through this. So let us keep 13 and 12 separately but have the same date. Back to 22 then, that is future documents and the documents that are created since Monday. We have just simply repeated McGowan's method of service in 22.1, 2 and 3.

Paragraph 23 is the provision that such steps should be good and sufficient, and 24 is the date on which those documents are deemed served.

MR JUSTICE SOOLE: Can you, where it says paragraph 22.2, can you put "Schedule 2" not second schedule.

MS STACEY: Yes, Schedule 2.

MR JUSTICE SOOLE: "In Schedule 2".

MS STACEY: Yes. 22.3 is the sending of the document to anyone who has asked. Then 23 and 24 should be self-explanatory.

MR JUSTICE SOOLE: Yes.

MS STACEY: Paragraph 25, my Lord, is the general liberty to apply provision.

MR JUSTICE SOOLE: Yes.

MS STACEY: What we have done there is said "may apply at any time to discharge it or any part" that has been added, and we have put in "including in relation to methods of alternative service".

MR JUSTICE SOOLE: Yes.

MS STACEY: Then costs in the case. Then we have reference in 27 to sealed copies of this order being provided. We might want to take out the word "sealed" just for completeness or for consistency's sake, because we took the view that we did not need to specify, but that is what we are planning on.

MR JUSTICE SOOLE: I think that is a standard wording.

MS STACEY: Okay.

MR JUSTICE SOOLE: Anything else you want to say at this stage?

MS STACEY: That is it, my Lord.

MR JUSTICE SOOLE: Mr Laurie, anything you want to say at this stage? What you see is, as I have explained before, the mechanism is to join defendants, to have a review hearing in April and then -- I have not accepted the application that it should proceed to trial on a very early timetable.

MR LAURIE: Yes, but the 15th will be the date you set a trial though?

MR JUSTICE SOOLE: Sorry?

MR LAURIE: The 15th will be -- you will set a trial date on the 15th?

MR JUSTICE SOOLE: No, I will not set a trial date. That will be later on.

MR LAURIE: Okay.

MR JUSTICE SOOLE: The most that would happen is there would be what is called a trial window and it would say "The trial will be ..." It is possible we might in a case where ... normally we do not. Normally we say it will be held

in a certain period, and then it gets fixed later on, but it might be that it was thought appropriate to --

A

MS STACEY: Fix it for a hearing. Well in cases such as this often you have an accelerated timetable and early dates, so yes it is possible.

MR JUSTICE SOOLE: Yes. When you have a claim in conspiracy, it is not as simple as a claim in trespass to land, being on M25 gantries and so on.

B

MS STACEY: No, no.

MR JUSTICE SOOLE: It may not ...

MS STACEY: It rather depends.

MR JUSTICE SOOLE: I have in mind what you pointed out to me the Supreme Court said. That is a matter of practicality rather than law, they were making that point.

C

MS STACEY: Yes.

MR JUSTICE SOOLE: It does not mean one ... but --

MS STACEY: And it also may depend on how many defences we get and how much engagement there is and the --

D

MR JUSTICE SOOLE: Exactly. All sorts of things.

MS STACEY: Yes.

MR JUSTICE SOOLE: Very well.

(4.09 pm)

E

(Judgment given)

(4.15 pm)

MR JUSTICE SOOLE: Is it amend the particulars of claim?

MS STACEY: Re-amend.

F

MR JUSTICE SOOLE: Is it reamend?

MS STACEY: Yes, because we changed the description.

MR JUSTICE SOOLE: And just because of that.

MS STACEY: There were a few other amendments. There was some detail of the conspiracy against the first defendant.

G

MR JUSTICE SOOLE: In the amended.

MS STACEY: Just to clarify the position.

MR JUSTICE SOOLE: It is reamended.

MS STACEY: It is reamended.

H

MR JUSTICE SOOLE: Very well, thank you. I will keep these papers.

MS STACEY: Thank you very much for your patience.

MR JUSTICE SOOLE: Not at all. Thank you for your assistance and thank you

Mr Laurie for your assistance. You will now then supply me with your --

MS STACEY: With an amended version. It will not --

MR JUSTICE SOOLE: There is no chance of my doing it today. Like many other people, I have many other things to do before the end of the day. Please to the associate, copy to my clerk, Mr John Lloyd.

MS STACEY: I will do that.

(4.16 pm)

(Hearing concluded)

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

Case No: QB-2022-001259
QB-2022-001420
QB-2022-001241

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 17 April 2024

BEFORE:

MR JUSTICE COTTER

BETWEEN:

(1) SHELL UK LIMITED
(2) SHELL INTERNATIONAL PETROLEUM LIMITED
(3) SHELL UK OIL PRODUCTS LTD

Claimants

- and -

PERSONS UNKNOWN

Defendants

MS M STACEY KC (instructed by Eversheds Sutherland) appeared on behalf of the
Claimants

MR LAURIE the Eighth Defendant appeared in person

PROCEEDINGS

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

A

B

C

D

E

F

G

H

(10.37 am)

A

MR JUSTICE COTTER: Good morning, everyone.

MS STACEY: Good morning, may it please you. I appear for the claimants in this matter; Mr Laurie, who is the eighth defendant, appears in person.

This is the hearing --

B

MR JUSTICE COTTER: Just bear with me one second.

MS STACEY: This is the review hearing which has been listed pursuant to paragraph 17 of Sewell J (Inaudible) March.

MR JUSTICE COTTER: Yes.

C

MS STACEY: We are seeking a short continuation of injunctions granted by Hill J last year, and directions for a final hearing.

My Lord, before I kick off, could I just run through some housekeeping.

MR JUSTICE COTTER: Mm-hmm.

D

MS STACEY: What we have, and what I hope your Lordship has, is a set of hearing bundles. Does your Lordship propose to deal with these electronically or in hard copy?

MR JUSTICE COTTER: I've done both, but we'll do hard copy to start off with.

E

MS STACEY: Okay. So we have I think about 15 hearing bundles which were provided in hard copy. Some of the referencing, my Lord (Inaudible) work out has gone awry in relation to Mr Pritchard-Gamble's second witness statement, you may have noticed when looking at it and some of the references to the exhibit. I have a corrected set that you can swap out, which might make cross-referencing a lot easier for your Lordship.

F

MR JUSTICE COTTER: I'm all right for the moment. I have read I think as much of the paperwork as I need to at this stage and have managed such difficulties as they exist.

MS STACEY: I am grateful.

G

MR JUSTICE COTTER: Yes.

MS STACEY: The other update, if you like, to housekeeping is that we have a further witness statement Oldfield 9. The job of that witness statement is to satisfy the court that the latest documents have indeed been served. That's the application

H

notices in terms of service, the draft orders, the skeleton argument, notice of hearing, and that's been provided.

It was only completed very, very late last night, my Lord, so the schedule addresses haven't yet been redacted.

MR JUSTICE COTTER: Yes.

MS STACEY: But that means we haven't yet provided it to Mr Laurie, but we have explained the position to him.

MR JUSTICE COTTER: Yes, okay.

MS STACEY: I have an unredacted set which I can hand up to your Lordship, unless you would prefer to wait for the redacted version.

MR JUSTICE COTTER: No, I'm happy to have a version with the names on. I don't need a redacted version.

MS STACEY: That's Oldfield 9, that completes the documents.

Your Lordship should also have a supplemental bundle --

MR JUSTICE COTTER: I do, yes.

MS STACEY: I am grateful -- a skeleton argument from us, and an authorities bundle.

MR JUSTICE COTTER: Yes, I have had those.

MS STACEY: We have also recently sent electronically a table of witness evidence that was prepared in order to help your Lordship navigate the various witness statements in the bundle --

MR JUSTICE COTTER: Well, I have done this, and I will hear Mr Laurie, but I have to say I think I should state at the outset that my view of a review hearing of this nature is pretty much aligned with Cavanagh J in *Transport for London v Lee*. I don't exactly know what was envisaged by Hill J when she made the comments in relation to the review hearing, or indeed what Sewell J envisaged. But firstly, Hill J was dealing with a hearing in which the defendants were represented by leading counsel, and a number of arguments were put before her which she determined in a comprehensive judgment.

It was of the nature of an application to set aside the injunction and, therefore, required all of those issues to be dealt with. (Inaudible) Sewell J gave provision within his order expressly for anyone who wanted to make submissions in relation to the review -- I will come on to this in a second -- to give the court advance notice and to set them out.

A Now at the moment, I have neither of those, and I am not sure, I am very far from sure, that the court should, in such circumstances, be much inclined to go through the whole of the issues in great detail. Rather, it seems to me, you can ask a very simple question: what's changed and what's likely to change before trial? The answer to the question is: nothing's changed and nothing's likely to change, then that must provide a very clear and firm steer to continuation of the order, particularly when one is looking at the timeframe, which is the same as effectively B faced by Cavanagh, who ordered an expedited trial in *Transport for London v Lee*, of a matter of three months, possibly, at the outside, six to November.

C But even then -- and I come on to directions, and there is an issue which we'll come on to later on in the hearing about this -- there is an element here of preparing at very significant costs for something which in reality is going to be a repeat of what we have today, which is with very little said against the continuation of the order, given what might be said to be the almost unarguable position that the claimants' rights need a degree of protection.

D And I am very conscious of the court's resources, the resources of everybody, in relation to this. Mr Laurie appears -- and I will hear Mr Laurie in a moment as to what he has to say -- but you see the point. It's an entirely different hearing to the one before Hill J --

E MS STACEY: I understand fully what your Lordship is saying, but our experience in the Shell cases in particular have been on each occasion last-minute, turned up by interested parties, Mr Simblet KC was represented and was given, I think two days' notice --

F MR JUSTICE COTTER: Absolutely.

MS STACEY: So in anticipation of what might transpire, due to the experience we have had in these kind of cases, I am fully with your Lordship --

G MR JUSTICE COTTER: It's not a criticism in any way, shape or form. It's simply an indication of where I am now, sitting here, and where you are standing before me --

MS STACEY: Well, I am certainly grateful to hear that.

H MR JUSTICE COTTER: -- is that I ... I mean, again, and I do this so Mr Laurie understands the (Inaudible) Hill J, or Johnson J, considered these matters in very great detail. And rather akin to the approach of Cavanagh J in *Transport for*

A *London v Lee*, one could say, "I agree with that, I agree with what was said". And also, and I see no reason to depart from anything because nothing, as I have said, has been put before me that materially alters the considerations that the judges faced, and there's been no appeal.

B So in those circumstances, reviews of this type are the exception rather than the rule in injunction cases. So against (Inaudible) Mr Laurie understands in the nearly 21 years in which I have been treading the boards as a part-time and full-time judge, I have dealt with an awful lot of injunctions. And what you have very often is an issue hearing, which can be emergency without the other side attending, or can be on notice where you get the chance. There might then be an interim hearing which lasts a short period of time, so there is a chance of a proper argument about whether there should be an interim hearing, or there might just be an interim hearing. But there is then a trial, okay: interim hearing, trial.

C You don't usually get built into it a review hearing unless there is some belief that there's going to be a substantial change of fact or law which alters the grounds. D So one can think of a number of examples, I needn't really go through them, but the reality of the matter is you don't just stick a review in because your anticipation is that the trial will be the big review of it. That's what it's there for.

E Now there has been a practice, there was a practice in these injunction cases of this type, general type of injunction, of letting the sort of final trial disappear into the long grass. The problem, the mischief, then, is that the injunction stays in force without anybody doing anything to say how long it should be in force. And you don't want to find yourself ten years down the line, still subject to injunction, F when the whole world's moved on, or not moved on.

G So what happened in those circumstances was this system of review. And part of that, and I think -- I don't speak here unrealistically or unreasonably -- was to sort of force the claimants to progress matters one way or the other because they didn't, because they didn't see any need to because they had achieved what they wanted, which was holding the position.

H But here I have a trial date, which I'm going to have a review date. This is not the trial. In three months' time, there's going to be a trial. So in those circumstances, the mischief of this ball being kicked into the long grass and there being no review, it's gone. So I'm left here with, I think, a position whereby the

A court, Hill J, Sewell J anticipated there may be a root and branch challenge to this injunction at this stage, although I would query why that was at review rather than trial, but park that for a moment. But subject to what Mr Laurie has to say, there hasn't been, in which case I really am starting from, and I -- I have many faults as a judge, but a lack of pragmatism is not usually addressed as one of them.

As I say, I ask the question: since those hearings, and bearing in mind the trial, what's changed and what's likely to change before the trial in the next three months? And I think the answer to that at the moment, from what I have read, everything I have read, is nothing.

MS STACEY: My Lord, I will refer to Mr Laurie. He notified me yesterday that one thing had changed, and it was a matter he wanted to raise before your Lordship.

MR JUSTICE COTTER: Yes.

MS STACEY: (Inaudible) the Public Order Act has come into force and I think he wishes to make submissions in relation to that. But that is a change which I think he relies on in the (Inaudible) of change.

MR JUSTICE COTTER: Okay. Subject to some points I'll come on to, that might be an example of a matter which has changed or might have changed. Fine, and I can sit and hear submissions on that. But subject to that, rehearsal of all of the issues -- sadly, it's just the way it has been. The claimants have been forced -- I don't know whether "forced" is the right expression or not -- the claimants have certainly found itself in a position of having to engage in a very vigorous bout of shadow boxing.

MS STACEY: Indeed. In order to anticipate arguments which may potentially be raised --

MR JUSTICE COTTER: But they haven't been.

MS STACEY: -- doesn't know whether (Overspeaking) --

MR JUSTICE COTTER: Yes, absolutely.

MS STACEY: And that's enhanced in relation to (Inaudible) anything. They're particularly under scrutiny, under the microscope for whatever reason. So that's why we set it out --

MR JUSTICE COTTER: Yes. Well, it has been, and I've had a day to read it, and I have taken the day to read it. So just by way of overview, that is the position, and I will hear Mr Laurie on what he has to say in a moment. But subject to that,

on the material issues as I understood them to be prior to any submissions
Mr Laurie wishes to make, subject to those, the evidence persuades me in relation
to continuation. I would hesitate to say this, it's very difficult to see on what basis
it couldn't.

MS STACEY: No, my Lord, I am with you, obviously. I was proposing to deal -- that
takes out the (Inaudible) of my submissions. I was proposing to address service
first, ie service of this application, which is comprehensively dealt with in
Alison Oldfield's eighth statement, then to take your Lordship to the case of
continuation, but it doesn't sound like I'm going to trouble you too much --

MR JUSTICE COTTER: Well, I will hear Mr Laurie, but subject to that -- and you may
respond to that -- subject to that and any other issues he wishes now to seek
permission to address me on, subject to that, in terms of the shadow boxing
element of what you anticipated --

MS STACEY: You have our written argument.

MR JUSTICE COTTER: Because they have very detailed written arguments, skeleton
arguments, comprehensively reviewing everything that's gone on. Of course
I have read the judgments of Hill J, Johnson J -- not all of the authorities, but the
significant authorities you've referred to. I've done my homework, but I don't
see -- much as I say the approach -- it's even more streamlined, in my view,
perhaps than faced by Cavanagh J in a sense, because there were some material
changes he had to consider in relation to *Transport for London* by virtue of the
nature of the change. Here --

MS STACEY: Yes. We're seeking an identical order for a shortish period of time. My
Lord, the third matter was there is a change, and that's our application for variation
in terms of service. I characterise those as relatively minor and proposals which
make it more likely to be documents to come to the attention of defendants, but I'll
go on to that in a few moments.

MR JUSTICE COTTER: You can, but I have read them as well. I mean, they are
pragmatic in the face of this. You can't make the perfect the enemy of the good in
relation to these (Inaudible), and I also take again a pragmatic view in relation to
this. And I think again from the range of cases, this proposition emerges:
concerted action by groups of individuals under the banners of any of these groups
of itself requires a degree of coordination. Nothing wrong with that, in the

coordination, I mean. It is highly unlikely in such circumstances that anyone doing so would not become aware of the existence of the material orders.

Now what they seek to do in relation to further gaining information isn't, but that is the backcloth to these injunctions. And it is, in a sense, materially different to the traveller injunctions in that regard, where you may well have what could be described as true and complete ignorance in relation to a particular local authority stance which may be different -- you understand in traveller injunctions (Overspeaking) a lot of those -- materially different. So you have crossed the border from Devon into Cornwall and find that Cornwall's approach to matters and the protection of its sites is very different to Devon.

Now, that's a real problem in service in those cases. I have dealt with it, believe you me, I have grappled with it. It's just not the position here, and that's been articulated by Freeman J clearly, and others, and I think possibly even me in other cases.

MS STACEY: In the *National Highways* case where your Lordship (Inaudible), but it's vanishing unlikely that people involved in this kind of activity would not be aware of the injunction, given the constructive (Several inaudible words). My Lord, you anticipate an argument I was going to make, had you required me --

MR JUSTICE COTTER: I don't, because the reality of the position has to be adopted.

Now, there may be a structured, good reason to either attract the review, but in relation to the service provisions, they're very difficult to deal with if one wants to achieve perfection, the perfection of service being very difficult anyway.

You can't, and the reality of the matter is, as you know, that if an individual ever felt that they faced a position whereby they were in contempt proceedings and they had never been served and could validly show to the court -- and this has been established in a number of cases by individuals who didn't know about the order -- then the court will make that finding and the consequences from that flow.

MS STACEY: And the variations we are seeking are simply we don't send the addresses that they no longer reside at. As your Lordship described, that is pragmatic, that we don't have to send emails and multiple attachments, but we simply send a link. And those are what I would describe as relatively minor changes, which are more likely to bring the documents to the attention of the defendants.

MR JUSTICE COTTER: Yes.

A MS STACEY: The fourth area which I was proposing to address your Lordship on, and which I will have to, no doubt, (Inaudible) is directions. I will take you to the proposed directions order.

What we have done there is make provision -- given specifically in relation to petrol stations, we have 15 named defendants who have been joined, all of whom may put in defences. I don't think again --

B MR JUSTICE COTTER: Well, let's start with that, actually, because it targets in on a concern I have.

MS STACEY: It's the supplemental bundle, my Lord --

C MR JUSTICE COTTER: No, I'm dealing with Sewell J's order first off, so if you can turn that up. This is Sewell J's order, Mr Laurie, made in this matter on 15 March, if my memory serves me right -- is that the right date? I think it is.

MS STACEY: I don't think Mr Laurie (Inaudible) has pages, but perhaps I could give him -- I am working electronically here, I could give him my bundle.

D MR JUSTICE COTTER: Well, it's -- I have it in numerous places. Core bundle 1, page 14 is where I'm looking at.

MS STACEY: Yes.

E MR JUSTICE COTTER: Okay. Now again, I'm speaking here generally and I hope in a helpful way so Mr Laurie understands what I'm driving at here. The judge, Sewell J, was trying to progress the matters to a final hearing, and he also had the order of Hill J at paragraph 6 -- we don't need to turn it up -- about the need for a review, bearing in mind that she had just had a fully contested hearing with leading counsel (Inaudible) arguments. So he set those out, and he dealt with the directions for the final hearing at paragraphs 11 to 21. He says at 11:

"The claimants are to file any updating evidence in the course of the review hearing, which they have done, do the re-amended Particulars of Claim (Inaudible) as they have done, 13 (Inaudible) so."

G He then says:

"The defendants shall file and serve any evidence upon which they seek to rely by 4 April 2024."

H Now, stopping there for a moment, no evidence has been served. But what I rather struggle with is the order of paragraphs 14 and 15. Paragraph 15 is:

"The named defendants and any other person falling within the definition as persons unknown [the first defendants] who may wish to defend the claims or any of them should file and serve on the relevant claimants an acknowledgment of service no later than 12 April 2024."

Have there been any acknowledgments of service?

MS STACEY: No. But, my Lord, the reason for that, there is a bit of a debate from

(Inaudible) J, I understand the (Several inaudible words) is that where you have an order that's containing an alternative service, as your Lordship will know, it has to contain the date by which an acknowledgment of service must be served, and a defence in order for it to be effected.

That's why that paragraph was put in there. They said there would be a date for the acknowledgment of service.

MR JUSTICE COTTER: But that's come and gone --

MS STACEY: I anticipated that would have to be changed at this hearing because -- it is a practical reason, nothing short of that.

MR JUSTICE COTTER: But there hasn't been any acknowledgment of service by any defendant. So as we stand, any defendant who wishes to defend the claim is in breach of paragraph 15.

MS STACEY: Yes, but there's a provision of liberty to vary their reply --

MR JUSTICE COTTER: There is, of course, but I don't have any.

MS STACEY: (Inaudible). Not today, but at the final hearing, between now and the final hearing, someone might wake up -- again, my Lord, it's abundance of caution --

MR JUSTICE COTTER: Well, it is, but I'm afraid I rather take a simplistic view of this: unless we're going to engage in another even more vigorous and furious bout of shadowboxing, we actually need to know what the arguments are and who's going to contest the matter.

MS STACEY: That's what we're seeking to do with the directions that we asked

(Inaudible) J to make in the shortened truncated version we were given. My Lord, yes, I suppose I should also mention this: it's not only defendants, but also interested persons pursuant to rule 40.9, and Hill J's hearing was -- it wasn't a defendant who had pitched up and made a --

MR JUSTICE COTTER: No, I have that.

MS STACEY: Yes.

A MR JUSTICE COTTER: I have that. But still in relation to this matter, the difficulty is we're going to fall into a position of the court making orders which are breached and requiring, it seems to me, then some sort of application.

So we come on to that, and I will hear Mr Laurie then, because what he tried to do in relation to this hearing is:

B "Any named defendants who wish or may defend the claims should file a defence by no later than 15 May 2024."

Yes? So does that mean I can file a defence even though I have not filed an acknowledgment of service?

MS STACEY: Well, on the face of it, yes.

C MR JUSTICE COTTER: Well, that doesn't fly, does it?

MS STACEY: If it helps, my Lord, given the cautious approach that we are content to adopt in order to ensure that no future judge, who is perhaps not as pragmatic as your Lordship, takes a different view with the intent to extend the date in paragraph 15 as part of the current directions --

D MR JUSTICE COTTER: Well, I don't have a difficulty with that, and I understand it.

However, in the event that there is no response by any defendant at that date, no defence, nor acknowledgment of service, no application by any interested party -- I keep on using this phrase, but isn't the danger that you find yourself E expending very considerable costs and putting the court to a two-day and a half day listing when the reality of the matter is there is no need and it's not proper.

Because the normal way in which any civil set of proceedings proceeds is: claim, response, understanding of response, if necessary reply, hearing, truncated. And if there isn't a response to this, and there was of course before Hill J, but if the F reality of the matter is the view has been taken -- subject to what Mr Laurie wishes to add -- that on those arguments, the defendant is simply not going to win before the court -- they tried them, they've not won, did not appeal them -- so they're now going to be rehearsed or revisited; and that a view has been taken, I know not, that G based on the evidence and what might be thought what was described realistically, if I may say, with deference to the Supreme Court as the obviously arguable position in relation to the claimants' rights on these positions, there's not going to be much chance of defending the final trial.

A MS STACEY: No. I should probably explain why -- there are two other things that might need to be considered in the mix. Firstly, in terms of your comment about costs, we're only put to additional costs, if indeed we receive defences and have to file evidence in response to those. So the timetable's extended to anticipate that might happen. It might not, but it's just simply causing a delay rather than necessarily additional costs.

B MR JUSTICE COTTER: It is. But in the event that they don't, I would like the directions tailored in some way to reflect the fact that there is no argument -- now, it doesn't mean that the court doesn't need to be satisfied, it's not a rubber stamping exercise necessarily, it never is, as you know, in final hearings, where other sides don't attend because, for example, an unrealistic, unreasonable or illegal order may be sought -- in wider hearings, not this.

C So of course the court has to be assured of that. But subject to that --

D MS STACEY: My Lord, I have no difficulty with that, the tailoring that you just (Inaudible). But in terms of if your Lordship is thinking to bring forward the date, that would be a problem --

E MR JUSTICE COTTER: No, no, I'm not bringing forward the date -- no, no, I'm sorry. I am interested in jealously guarding the resources of the court and also being able to list this matter, and list it to reflect the issues that are likely to be before the court. If the issues are not going to be before the court in any contested fashion, then these directions and the court's time estimate should reflect that.

F MS STACEY: That's extremely helpful. If I can just finish the point on delay that I was (Inaudible) just to make sure you understand where I'm coming from, I don't know whether it features in the evidence. Every time an order's made by your Lordship today, by Sewell J, or an injunction (Inaudible) is made, Hill J and your Lordship today were prepared to continue, we have to put all the notices up at each and every --

G MR JUSTICE COTTER: I know -- (Overspeaking).

H MS STACEY: -- these people endeavour to do so, that takes about four weeks, I am instructed. So it's for that reason that my clients candidly would rather have a longer continuation whilst progressing the matter; so treading a fine line between not being criticised for not getting on with it, and not having too short a period which means they are required to duplicate that process too quickly.

These directions we have come up with, if you like might mean -- so it's for that reason, I was concerned that my Lord was proposing to bring the date forward.

A MR JUSTICE COTTER: No, I'm not. No, no, no, no, no, I'm not. What I'm trying to do, I make it clear, is I will hear and determine any arguments I should hear and determine. If there isn't an argument, I don't want to waste valuable resources of the court, or indeed of anyone, in an exercise which is in reality you providing
B a skeleton argument which is not addressed in any detail, a huge amount of work, the court spending a day/a day and a half reading it, setting aside two and a half days, to the prejudice of other matters which are before the court when the reality is it's just not needed.

C MS STACEY: I am sure that can be -- currently the draft order's at paragraph 13, my Lord, which is at page 7 of the supplemental bundle. That provides that the matter should be listed for a final hearing on the first available date after 24 July with a time estimate of two and a half days. That can be amended in order to cater for the scenario that your Lordship --

D MR JUSTICE COTTER: Yes, you could have a position and -- although it wouldn't be necessarily me trying it, you can have a position where a judge would -- and I used to do this time and time again -- retain light-touch case management of this, which would mean that if things needed to be changed without great cost, they could be,
E but that case management is designed to enable the overriding objective to be achieved, which includes the knock-on effect on everybody else of wasting court time.

MS STACEY: That doesn't, I suppose, deal with the 48 hours provision, which is the provision ready for any party who wishes to be heard to make an application in
F that period. The 48 hours reflects Hill J. We tried to have that period extended so we can have (Inaudible) indication to know where we stood, but she wasn't prepared to extend that --

G MR JUSTICE COTTER: Well, here I am, I haven't had anything within 48 hours, which is one of the matters I want to raise with Mr Laurie. I've not had anything. And another clear aim of the entire civil justice system is to -- for want of a better phrase -- avoid ambush and give time for preparation, and that's why notice is required. I don't have anything and at the moment, and I will come to this,
H

Mr Laurie doesn't have any right to address me because Sewell J's provisions are not being complied with.

Now, he might persuade me otherwise, but I absolutely understand the sensitivity of this matter, but there needs to be a balance struck. It effects an awful lot of people and it's of huge significance to those involved. I absolutely understand that, but there needs to be a balance struck. I would, by some thought during the course of today as to how the directions can be tailored such that the lack of any engagement, if I can put it this way, is reflected and dealt with accordingly, by me if necessary, even though I won't be trying it necessarily, it doesn't need to be reserved to any judge --

MS STACEY: Can it be reserved to any judge?

MR JUSTICE COTTER: Very difficult (Inaudible). The reason -- there are significant difficulties with reserving it to any judge. What would listing do if listing had one of the judges that had been involved in it or knew about it, then they would try and do their best, it's sort of soft touch. And I'm an example of a judge who deals with these injunctions, but I happen to be in a week-long gap between one nine-week murder and another two-week murder starting in -- I just happen to be available to deal with these. And where I would be in July, I wouldn't have a clue; and you wouldn't want to delay your hearing because the other thing as well is you haven't put dates in.

So it's very difficult, but it will not be difficult to list the matter in front of a High Court judge, subject to vacation, which we can deal with. That's not the problem. What I'm more interested in is what that judge deals with. I have given you my view, so at the moment when I came into court, I didn't have anything complying with paragraphs 20 or 21. I had read everything that I thought I needed to to prepare for this hearing, and frankly had reached a very firm provisional view on a number of matters.

MS STACEY: My Lord, that's very helpful. I don't suppose -- could I ask you to turn up the draft directions, given what you have just said because that impacts one of our proposed directions. Supplemental bundle, tab 1, page 7.

MR JUSTICE COTTER: Yes.

MS STACEY: My Lord, the direction starts at page 6, paragraph 9.

MR JUSTICE COTTER: Yes.

A MS STACEY: I took your Lordship to paragraph 13, which is listing). Then you will see 16, and perhaps this is overly generous, given what your Lordship has just said. It says:

B "Any defendant who has not complied with paragraph 9 [that's the defence paragraph] and any other person who claims to be affected and wishes to therefore discharge it, shall apply to the court for permission to be heard, must inform (Inaudible) than 48 hours."

So that doesn't really grapple with your Lordship's point about if you don't satisfy paragraph 9, ie file a defence, you don't get much clarity unless we're within the 48-hour period before the listing.

C MR JUSTICE COTTER: Well, it's very difficult, isn't it? I mean, it's very difficult indeed to precisely tailor these to take account of the concerns that are set out, but also at the same time potentially reflect -- which I suspect of course has been in the mind of everyone dealing with it so far -- the possibility of someone who would fall in the category of currently persons unknown who wishes then to engage in the proceedings. I understand that as a proposition, but here's the but: they haven't to date.

MS STACEY: No, and it's being going on for quite some time.

E MR JUSTICE COTTER: It's been going on for quite some time, exactly. So my view in relation to this is slightly tougher.

MS STACEY: I would propose bringing the 48-hour period back, so to two to four days. So you have the defence date, then you have a period after the defence date to enable them to set aside if they're in breach; and after that is the cutoff point and then you can list it accordingly.

F MR JUSTICE COTTER: Yes.

MS STACEY: I will have a think about what that date --

MR JUSTICE COTTER: That's more what I had in mind.

MS STACEY: I am grateful.

G MR JUSTICE COTTER: And again, and I make it absolutely clear: the primary driver for this is the court's desire to manage its limited resources because of the pressures not to put what would be on the current listing three, probably four, days of High Court judge time aside which is not needed because it's four days of High Court judge's time in the enormous pressures we face in different jurisdictions.

A And you will know -- and again, Mr Laurie, you will understand from the papers -- the pressures on the criminal trials, other things. To say four days, which is just not needed, it's not exactly a disaster, but it's something that I at this stage would be wrong not to be thinking about very carefully.

B MS STACEY: My Lord, that needs to be very clearly articulated in the order. Sewell J, if I may say so -- I took (Inaudible) Wolverhampton where he says cases of this nature, as they are very rarely very much contested (Inaudible) it didn't necessarily apply to a case where there's a conspiracy to injure.

So we will go away --

C MR JUSTICE COTTER: Well, we can think about that element. But coming back to where we are now, which is why I wanted to do this, to say at this stage is because if we carry on on the order -- so this is the order of Sewell J -- we'll come to the point now, Mr Laurie's been very patient -- in which we have what he tried to do. This is what Sewell J tried to do:

D "Skeleton arguments to be filed two days before the review hearing."

E Now at that stage, there is no doubt he was envisaging anyone who was going to seek to challenge in a substantial way the injunction would have filed an acknowledgment of service no later than 12 April, and filed any evidence that they were going to rely upon by 10 April. Then at paragraph 20:

F "Any named defendants who first comply with paragraphs 14 or 15 [so we can see those are the points I have just referred to, the acknowledgment of service and the evidence] will need to apply for permission to be heard at the review hearing."

G Because of course -- again, (Several inaudible words) that I was -- just not joined a party, just not come along prior:

H "But if they wish to do so must inform the claimants' solicitors by email to the addresses 48 hours before making such application (Inaudible) and the basis for it."

MS STACEY: Mr Laurie did that by email. He told us he was -- that's what I was referring to earlier. He didn't (Inaudible) email saying he proposed to attend and set out the basis of what he was proposing to --

MR JUSTICE COTTER: Right, okay. But in relation to that, it is still an order which says that permission must be applied for at this hearing because the procedural

A requirements have not been complied with: no acknowledgment of service and no evidence. Now the acknowledgment of service is -- advanced (Inaudible) proceedings, but the evidence. What I have, Mr Laurie, then is to consider -- you want to make some submissions to me -- firstly, should I permit you to do so, bearing in mind what the judge tried to do?

B So what do you say about that, do you get me? Do you understand what I'm saying?

MR LAURIE: Yes, I understand what you're saying.

C MR JUSTICE COTTER: He tried as best he could -- no, sit yourself down, there's no need to stand up for me. Stand if it's easier, sit or stand, whatever you want to do, I don't mind. What he was trying to do -- not me, what he was trying to do -- was to get somebody to engage before the hearing with evidence and acknowledgment of service.

D MR LAURIE: I get that. But having said that, I also -- first of all, thank you for the explanation, I understand the process a bit more than I did (Inaudible). But I did sit through the whole of the last hearing and obviously didn't understand it properly, so that's obvious.

I do get a lot more about the process now and the understanding of what the different dates -- whatever reason, I thought I had done, but --

E MR JUSTICE COTTER: I mean, you notified -- the way he drafted it was to -- because you have two. They knew, I didn't.

F MR LAURIE: So -- I mean, I'm an engineer, I'm not involved in legal things at all -- well, I was, but only on an engineering basis, advising people on engineering matters, and I would hope that my background is as a pragmatic engineer, if you know what I mean.

MR JUSTICE COTTER: Yes. Most engineers are pragmatic, Mr Laurie.

MR LAURIE: Sorry?

MR JUSTICE COTTER: Most engineers are pragmatic.

G MR LAURIE: I wish.

MR JUSTICE COTTER: Really?

MR LAURIE: Anyway, yes ...

H

A MR JUSTICE COTTER: All right. So you didn't really understand (Overspeaking) what paragraphs 14 and 15 were driving at, and you thought if you gave 48 hours notice to either side, you would be entitled to do it. Is that it?

MR LAURIE: In a nutshell.

MR JUSTICE COTTER: All right, okay. Do you have a document or something --

B MR LAURIE: I've got no documents, I've just got what I thought -- it's just what I thought about and it's very quick. It's not, you know --

C MR JUSTICE COTTER: Speak -- I'm going to let you, yes. Again, anyone with any acknowledge of the way I have conducted these hearings in this and other cases of a wide range knows that I tend to listen to people rather than shut them out. But you all understand that I'm doing so by way of effectively letting you get off not having complied with what the previous judge was asking -- yes, well, all right.

D But again, you've not heard me, and it may be a neat point that you are about to tell me about and I will listen and deal with. But you will forgive me for making just a generalised point beforehand, which I say in these cases, and I have said them in a range of injunctive cases from HS2 through to these, and I'm sure you are familiar with this.

E What I think about the underlying merits of anything is utterly irrelevant and must not in any way colour mine or any other judge's approach to this. It's strictly the rule of law, so it really has to be addressed to the relevant legal principles. And I've heard and allowed people to say passionately and with great belief why they do what they do, yes?

F But the reality of the matter is if it's not me, it will be somebody else in exactly the same position will say exactly the same thing: it doesn't matter what I think about that, I'm not allowed to let that colour my approach. So with that, fire away.

MR LAURIE: So I wasn't going to make a big speech about --

MR JUSTICE COTTER: No, forgive me for saying that. I tend to say it --

MR LAURIE: (Overspeaking) I wasn't going to (Inaudible).

G MR JUSTICE COTTER: All right, on you go.

MR LAURIE: Maybe there will be a day for that, it's not my style anyway.

MR JUSTICE COTTER: Right, fire away.

H MR LAURIE: Okay. Very simply put, when the injunction -- and I'll just quickly say (Inaudible) as well we didn't know about the injunction or anything (Inaudible).

A So -- but the point I was very simply going to say is that actually things have changed since the injunction was made two years ago, and the protection -- under the protection that Shell have from the law now is substantially different in that section 7, section 12 and section 14 are considerably different now from when they were. And there are various other elements of the law, like not locking-on and things like that, that give them protection that they didn't have at that particular time and that they do have now, and I was just going to suggest that they should rely on the law like everyone else.

B
C MR JUSTICE COTTER: So it is your submission that criminal law gives sufficient protection from all or potential infringements of the claimants' right to mean that the injunction is unnecessary; is that it?

MR LAURIE: Well that -- absolutely, that -- for instance, that the police now are (Inaudible) in almost any circumstances and stop things in a matter of seconds, rather than letting things build up in the way they used to, and the penalties are that much higher.

D But it does make -- it does change the scene, the protest scene quite a lot, and I have no -- you know, I could go on and on about it, but I think that at the end of the day, that's the very simple point and, you know, at the very least it bears consideration.

E MR JUSTICE COTTER: I mean, I confess, I'm not in the position of giving any false impression. I'm not as clear in my mind about material dates for changes in the criminal law as I probably should be.

MR LAURIE: It happened substantially after this injunction --

F MR JUSTICE COTTER: Mm-hmm, I know, I'm just saying I don't --

MR LAURIE: (Overspeaking) it came I think it was --

MS STACEY: September 2023.

G MR LAURIE: September 2023, I think it was. There was two, there was one came in force in April, and then there was one update (Inaudible) that was in April that did the locking on and the section 12 -- then section 7 came in in April. Section 7 is a very substantial protection from ... I'm very, you know --

H MR JUSTICE COTTER: Yes, I understand what you are saying, and that is a perfectly lucid argument -- perfectly lucid, perfectly (Several inaudible words) if you get me. So I understand that argument.

A MR LAURIE: Can I also say that I'm very much of the opinion as well if you can come to the conclusion on this quickly, then let's come to a conclusion on it quickly and move on to the -- get the whole thing sorted out rather than dragging on.

B MR JUSTICE COTTER: Yes. I mean, the nature of matters changes by virtue of the orders -- sorry, I'm thinking -- so does for obvious reasons the nature of the activities generally which seek to alter private and public attitudes to fossil fuels; whether they fall one side of lawful or the other side, they change.

Okay, all right. That's helpful, thank you. All right. I'm not repeating, it's (Inaudible) out of the blue and I'm still thinking about that. So I'll hear from Ms Stacey, and then I may have a little bit of a think about it. Yes.

C MS STACEY: My Lord, yes.

D The Public Order Act creates new offences relating to public order. That's not disputed. In doing, it, if you like, provides another option. It may be that in certain cases, private individuals wish to rely on the police; in other cases -- but they do not need to do so. The Public Order Act defences is reliance on police intervention and police prosecution. So the individual who can maintain a civil cause of action is not (Inaudible) in the driving seat. The Act is not to the exclusion of civil rights and a claim that you can demonstrate cause of action to bring their own claim have a right to justice if they choose to follow the civil route.

E Testing this way: all the injunctions which were recently granted -- I think we list them at paragraph 27 of our skeleton argument, all of which were post Public Order Act -- were considered to need to be revisited in light of that Act. It would place an enormous burden on the police, potentially, and it would not be just and convenient, in my submission, for that to be the outcome. The laws work together and the fact that one option is available does not preclude the (Inaudible) on the other.

G By of an example, my Lord, that you may be familiar with is the (Inaudible) Warwickshire injunction. That was an injunction obtained by the local authority pursuant to its local government powers, it had additional powers to obtain injunctions in certain circumstances. The land which formed the subject of that injunction overlapped with land which Valeria(?) owned -- this is (Inaudible) the same kind of area -- didn't preclude Valeria from deciding that it wished to be in

the driving seat and secure its own judgment, notwithstanding the overlap. The same point applies.

I say it's a non-point; in this case Shell has a legitimate interest in securing its own judgment to prevent (Inaudible) activities on its land. And the evidence more than bears out the fact that they reasonably apprehend a serious risk that the activities would resume if the injunctions were not in place in relation to both persons unknown and in relation to named defendants who have refused to give undertakings.

MR JUSTICE COTTER: I mean, in the civil law generally in a range of different areas over the years, the courts have granted injunctions to prevent conduct which would be otherwise criminal.

MS STACEY: Indeed they have.

MR JUSTICE COTTER: The reason I am pausing is I'm trying -- that much of course is clear. To consider -- what I can remember of any court that has considered the issue of principle in relation to the granting of injunctions -- I mean, whole hosts of legislation are based on this. I mean, in the behavioural sense --

MS STACEY: My Lord, if I may, the point was raised at the outcome of the *National Highways* injunctions -- I think it was Bennathan J's judgment, I can't remember which one right now, but in his judgment, there is a paragraph which -- the submission was that claimants should leave it to the police. I think that was in the context of highways, and there was public (Inaudible) to the land. It wasn't purely private land, there was a public area, public nuisance, should be left to the police, and in his judgment he said that wasn't the answer.

The claimants are entitled to rely on their own civil rights, as well as in circumstances where there are alternative options.

I can probably easily find over the lunch time adjournment that judgment and that reference --

MR JUSTICE COTTER: One of the difficulties of course is that police action is **ex post facto**.

MS STACEY: Yes.

MR JUSTICE COTTER: **(Pause)**. I'm thinking, Mr Laurie, again so you -- and I'm going to rise to think about it -- to put it in engineering terms, it rather is a point

which cuts across engineering practice over a long period of time. So I'll give you an example out of any of the current arenas in any of the (Inaudible) injunctions.

So the government had in 2014, the police -- anyway, it doesn't matter -- an Act that sought to deal with antisocial behaviour in the civil courts, providing a range of ways in which the civil courts could grant injunctions to restrain antisocial behaviour, a very significant percentage of which would be criminal. Now forgetting the rights and wrongs of it -- which I spent two happy years debating before writing a report to the Civil Justice Council on the whole issue -- the whole basis was that you couldn't just leave it to the police because it just didn't work in practice. The only way that the police could involve themselves was subject to resources after an event had occurred and with the limitations that they had; whereas an injunction acts prospectively to prevent the damage.

I've put it in a very simple fashion: if you live next door to somebody who's violent, and they've been violent towards you and other neighbours, you then get an injunction to prevent them being violent. They punch you when you can call the police, but no one will say, "Well, you can call the police if he punches you", they stop him. Because once you've been punched, you can't be unpunched, if you follow me. So the courts work on the basis that we will prevent him from engaging in that conduct, even though were he to engage in it, it would potentially give rise to criminal activity.

And that's the way the courts have worked. It's this difference between prospective and retrospective remedy for rights, do you follow me? The police can't come to your house and say, "I don't want you to go along to the Shell forecourt, wherever, and smash up a pump", an example. They can't, they just don't. The court can prevent you -- some court can prevent you from doing it by way of an order warning you as to what happens. But once the police can do, of course, is once you've done it, they can come along and arrest you.

But I think really the only basis upon which it seems to me your argument progresses is by -- forgive me if I have it wrong, you can tell me if I have this wrong -- the fear of the criminal law sanction will apply equally as well as the civil injunction to restrain people's behaviour. Do I have that right? In other words, if I know if I do something I risk criminal action, I won't do it, therefore a civil order stopping me from doing it is unnecessary; is that it?

A MR LAURIE: Yes. I mean, the example of a section 7, such a, you know, possible one year in prison, we're getting into the realms of breach of an injunction there and that's a similar kind of punishment. So if it works on one side, it works on the other, surely?

MR JUSTICE COTTER: Yes, but you get the point about the **ex post facto** business.

B MR LAURIE: I do take -- I do take the proactive point. I may not quite agree with you that the police would be able to intervene and stop people from having a protest, but that's by the by. But I understand what the intent is, but when the result is the same, surely the deterrent is the same?

C MR JUSTICE COTTER: Yes, it's not -- the way the civil courts have approached it historically, and it's such a fundamental and basic concept, that's why -- to give you an instant case, it's a bit like asking you to find in an engineering manual a concept which is so fundamental I wouldn't put that in the manual. It's sort of like that point, Mr Laurie, if you follow me, it's a fundamental principle.

D So what Ms Stacey is saying is it happens in all these cases in a wide range of circumstances, but not just in these activities but in the whole host of circumstances where conduct -- people come before the courts concerned about conduct of individuals which would give rise to potentially criminal charges.

E And believe you me, as we sit here now, injunctions will be granted up and down the land in county courts under the 2014 Act to prevent behaviour which is criminal -- antisocial behaviour, not behaviour that's caught by any of these injunctions in that sense, straightforward what you would describe -- you've been speaking to (Inaudible) says is antisocial behaviour related to drunkenness, homelessness, drug abuse, alcohol abuse. All behaviour is potentially -- so the same argument would work that way, if you follow. That's the problem I think you have, and it doesn't mean I don't have to reflect on it because I do, I take your point.

F MS STACEY: My Lord, can I make three points?

G MR JUSTICE COTTER: Yes.

H MS STACEY: The first is that section 7 -- I've just had a look at the legislation -- only covers infrastructure. So in terms of the sites that will be subject to these claims which cover Haven, which is the terminal jetty, but not the Tower, the global headquarters, or the petrol stations.

MR JUSTICE COTTER: Yes.

A MS STACEY: That's the first point. The second point in terms of deterrent effect, it's not the same for two reasons. There's no committal, if you like, your prospective point. Once you get the injunction, you (Inaudible) in the form of a committal and that's something you can prosecute/enforce. And secondly, it's reliant on resources. In our experience, we actually obtained the injunctions initially because B the police asked us to provide assistance to them in view of the onerous burden they are facing. That's the second point in terms of deterrent.

And thirdly, I would ask your Lordship to reflect on the nature of the harm which kind of underscores the need for --

C MR JUSTICE COTTER: Well, is it remedial harm? I mean, that's the problem --

MS STACEY: That's the point.

MR JUSTICE COTTER: That's why I am saying, that's what I was explaining to Mr Laurie about the point of -- it seems to me that for the argument to work, it has to be on the basis of deterrent. I think he understands that if you are facing D a criminal prosecution, you won't do it, and that means the civil order becomes otiose, you don't need it.

MS STACEY: Yes. But you may face a criminal prosecution or you may not, that's the point. Whereas if you have an injunction, it can be committed, the claimants can, E they're taking control of the process to enforce an injunction because it has obtained that protection, and it doesn't need to rely on the police having sufficient resources, time and inclination to do so.

And as I say, legislation is limited to the extent of the (Inaudible). If your Lordship would like me to get the passage in the judgment, I can try and look F that up --

MR JUSTICE COTTER: Of Bennathan J?

MS STACEY: Yes.

MR JUSTICE COTTER: I can do that.

G MS STACEY: I don't know which judgment it is, but I can certainly --

MR JUSTICE COTTER: I can have a think about that as well -- where are we now?

Right, okay. That point I need to think about, okay? I don't intend in the break traditionally in these cases to reserve judgment. As Mr Laurie says, you have to H get on with these things. I don't have any difficulty with the content of the eighth

A statement -- I'm not entirely familiar with the ninth statement, but I don't think it will materially alter my view if I read that -- of Ms Oldfield, and I don't have any problem with the service provisions.

I do want some thought to be given to the directions and how they can be crafted in relation to that. On that, Mr Laurie, I want to explain the difference between what I am doing, a review hearing, and a final trial, okay?

B In injunction hearings when you get an interim injunction, and a review hearing, it's not the final trial. So the judge has to look at a range of different principles in operation, and there are all sorts of phrases -- I'm not a great fan of holding the ring, whatever it is, but in other words preserving the position without finally determining the arguments before a final trial.

C So if I were against you at this stage, it would not be the final word on your argument, right, because I'm not the final trial judge. I have to consider, so what Ms Stacey has to persuade me of, is not her final argument on the subject, she just has to persuade me at this stage the position is I should continue the injunction, bearing in mind that argument.

D Putting it very simply: if there is a knockout blow to these, I shall stop it now, you have satisfied me there's a knockout blow. If I am not satisfied there is a knockout blow, then what I may do is continue the injunction, but it doesn't prevent at a trial the argument being rehearsed, reconsidered, with all due respect better and more comprehensively argued with more preparation time and responded to, and a judge who may disagree with me.

E So it's not the final trial, so that's an additional feature at this stage. Now why is that particularly important? One because it affects the approach I have to these principles. I don't have to -- if I am not satisfied it's a knockout punch -- I'm not using easy legal language here -- then I may continue the injunctions. If you want to run the argument in more detail, then there will be provisions to allow that. But what I've been trying to say earlier -- and that's fine, that's your right, subject to engaging in the process.

F What I must try and avoid is no one really disputing many elements of this, an awful lot of time of the court and expense of the claimants being set aside and wasted for issues that are not contested by the defendants because they may think we should be able to win that, which might be a realistic and legitimate view

A without making a concession. Because what tends to be different about private litigation between individuals is when someone's going to lose, they have a tendency to sort of accept it, I'm not going to win this so I'd better close down my exposure to costs or whatever, and say right, I'm not going to win it, and the claimant knows where they are.

B A lack of engagement means the claimant has to worry about what might be said that may never be said, and I have -- you have seen the skeleton argument, beautifully presented. The reality is that as she heads off for a cup of coffee whilst we're thinking about this, Ms Stacey's thinking I wish I knew I had that judge before I started and I could have said all this because I would have done
C it -- I would have watched an awful lot more television had I known that this is what's going to happen.

D It's all beautifully presented, but the reality is it's a review hearing because she's shadowboxing. She doesn't know whether she's going to get Mr Simblet, she doesn't know whether she's going to get another eminent pro bono silk who's going to -- or other lawyer, some excellent counsel who have contested a range of issues in these matters on a range of bases. She has no idea. So she gets everything ready to prepare for a battle that doesn't come, and I'm anxious to avoid that.

E MR LAURIE: Okay. Can I suggest that it seems to make -- I'm assuming this morning that you're going to come back and say it's a knockout blow and I have to abandon everything and walk away from it, so let's just accept that. I've made my point and move on.

F MR JUSTICE COTTER: I think I should -- it's ... it's sufficient of a point that I want to think about it, and I will say something about it.

G That's what I'm here for is to consider it, and I have to be satisfied -- you say (Inaudible) it's sufficient of a point that it requires me to think about it. It is certainly not one which I can just say yes, that's entirely hopeless. No, I'm going to think about it, but I stress it is still an interim review hearing, it's not the final
H hearing. So it's a tough old battle for you at this stage than it would be at the final trial, if you understand what I mean, because you could argue at the final trial that a permanent injunction was not required with other arguments in there, that would be stronger than they are here because this is an interim basis, because all I have to be satisfied of is a lower threshold of keeping things safe until there is a final trial

date, and it's only going to be in three months'/four months' time. So it's tougher in that regard, but I'm still going to think about it.

But that's what I want Ms Stacey to think about, and I think it's important for you to think about that as to whether or not you wish to engage further and run that point at the final trial or not, yes? But I want to try to do that with the directions, and the directions are already -- and I'm giving you a general indication from someone who's been in a whole range of work for a number of years, far more sympathetic to the defendants -- you might find that strange here in these cases, than there would be in others.

So if this was an injunction in relation to your next door neighbour and some problem you have with them, whatever it may be, the court would be much more unforgiving about the process, you know, if you didn't do this and this, it would strike you out, wouldn't let you say anything, it would be much tougher. So it's already reflecting the need to potentially allow people who've not been engaging so far to do so.

And I get that, and that's what's happened so far. But I think a balance has to be struck and I'm not sure that the current draft directions do that. It won't shut people finally out, they will be able to apply, but they will have to apply is the point I'm making, which would mean, again so you understand, just in case you have anything to say about this, that if I became a party to -- I was to engage in something that I thought was important in relation to this because of my political beliefs, I wanted to do something which was potentially caught by the injunction, that I thought I had a legal argument that had not been properly canvassed despite all the work that's been done -- and you've just come up with one that's not been addressed today -- there will be a door open to do that. But that door I think should be a clear door and not just a series of doors that go right the way through until -- I've set aside two and a half days with a day and a half's reading with a High Court judge's time.

And I really do want to stress that part of the reason for that is -- if you take me for an example, if I were to put aside for that, it would prevent them sending me to go and do something else. We're a scant resource, properly used, but it's not one of those concerns I am articulating when the truth of the matter is I'm going to go off and play golf, Mr Laurie. It's not like that, you know -- I don't play golf, but

A you get the point. It's because we're under pressure and therefore for me to set aside really four days, which is what's currently being envisaged with the time for reading time, I can't see it at the moment, unless something comes up that the court really needs to work on.

What I'm going to do is -- it's now 12.00 -- I am going to have a think about that. What I was going to suggest if I come back at 2.00 --

B MS STACEY: And in the meantime, my Lord, I will look --

C MR JUSTICE COTTER: You have a look at the order and think about that, I will think about this. I will then envisage giving an ex tempore judgment. What does that mean? I just give a judgment. The alternative is I go away, spend another seven or ten days, then produce a judgment, then the (Inaudible) has to be -- it's just more delay, more costs, more uncertainty, and I can do it faster. It won't be as beautifully polished as if I'd -- but I don't think that's necessary.

D MS STACEY: My Lord, what I will probably do is produce a draft of the facts and I will hand that up.

E MR JUSTICE COTTER: Yes, you can, but whatever you think's best. We can agree the principles, perhaps, and then there's still further time to -- whatever you think's the best way -- I think it's more important to sit down with those that instruct you and think about the framework of --

F MS STACEY: If we get to a position, then I'll (Overspeaking).

G MR JUSTICE COTTER: Yes, of what I'm trying to -- the balance I'm trying to achieve. I totally understand why the case has come so far, but I hope everybody understands why I'm coming at it with a slightly different angle.

H MS STACEY: No, no, that's extremely helpful, thank you. My Lord, I think that's it for the moment.

MR JUSTICE COTTER: Right, okay, I'll do that. We'll come back at 2.00, and in the interim, Mr Laurie, what I'm going to do is consider what you told me, and have a think about it, okay?

Thank you.

(12.00 pm)

(The luncheon adjournment)

(2.10 pm)

H MR JUSTICE COTTER: Does this concern directions?

MS STACEY: It does.

MR JUSTICE COTTER: What I would propose to do is give a judgment in relation to the first issues and then stop and we'll deal with directions.

(Judgment is given)

MR JUSTICE COTTER: Right, that's the first two sections. Where are we in relation to directions?

MS STACEY: My Lord, I have handed up a copy of the order, and what you have on there are some changes -- proposed changes in red which I propose that we go through.

MR JUSTICE COTTER: Yes.

MS STACEY: (Inaudible) to paragraph 5, it's to do with the longstop. We have proposed a longstop, but as you will have seen from the skeleton, we say that a caveat to that, which is subject to the court's ability to accommodate the trial by that date. So we are somewhat in the dark, and for that reason I have deleted the words because we just don't know, or we don't want to get into a situation of us having a longstop but then having to come back to the court to discharge it. I suggest that given the four weeks it takes us to put up the warning notices at all the sites, the petrol station sites, that's why I have inserted the words, "Four weeks after the date of the final hearing to the time for the order to be produced".

So we don't have any difficulty with the longstop, it's not because we want to drag things out, if you like, it's simply because that date seems a bit arbitrary.

MR JUSTICE COTTER: It's not arbitrary, it's the fact that you are concerned you won't be able to get a hearing before it.

MS STACEY: Well, we picked it out -- it fits with the directions exactly, but it's exactly that, my Lord, we were concerned that we don't know whether that date would work with the court.

So that's (Inaudible) why I didn't flag that with you.

MR JUSTICE COTTER: What's your availability like?

MR LAURIE: We can make ourselves available.

MR JUSTICE COTTER: Mm-hmm.

MS STACEY: It seemed to be more logical and coherent to say it shall continue to operate until the next order, and the directions cater for that.

A MR JUSTICE COTTER: You say that because -- and again so, Mr Laurie understands -- you say that because the requirement is to be that the court will list the matter on the first available date after July. It's not kicked into the long grass, it's just you're concerned the court might not be able to deal with it.

B MS STACEY: Exactly, given that there is a clear direction for listing -- or in my submission be sufficient for there to be a provision for continuation until a period after the date of that hearing for the court then to produce the order and for the service provisions to be provided.

MR JUSTICE COTTER: Mm-hmm, yes. I mean, the only concern I have is I referred to the longstop in the judgment --

C MS STACEY: Yes, I noticed that over the lunch time we -- but I did say in the skeleton it's subject to the court being able to accommodate that date.

MR JUSTICE COTTER: Yes, yes. Do you know, I'm ... sorry ...

D MS STACEY: Sorry to cut across your thinking. The other course I had would be to insert some words such as, "On 12 November 2024 or four weeks after the final hearing, whichever is the later", but it's just a bit more wordy.

MR JUSTICE COTTER: No, I prefer that.

MS STACEY: Yes, so it keeps 12 November in.

E MR JUSTICE COTTER: Yes, because I've referred to it already. And the reality of the matter is that what will happen is when this order is done, I will speak to the listing office personally about the matter. It won't disappear into any long grass in relation to this. The quicker we get a date, the better.

MS STACEY: Yes.

F MR JUSTICE COTTER: Now that's -- because it will not be -- I did wonder in the time available whether I should be doing it over the lunch time -- the problem is it's lunch time, so people disappear -- whether I should try and get a date now. I can't envisage that it will not be possible to deal with it. The likelihood, however, is, and I make this clear, that by virtue of the availability of High Court judges and G the listing once referred to as the vacation, the likelihood is that it will be October.

MS STACEY: Yes. It's helpful to have that indication. Can I ask for the insertion of the, "Four weeks if it is later"?

MR JUSTICE COTTER: Yes.

H MS STACEY: We want to cater for the --

MR JUSTICE COTTER: Sorry. Yes, Mr Laurie?

A MR LAURIE: I just need to (Inaudible). We have some dates that are fairly -- that the trial for the criminal side of this is taking place in August and September anyway, so most of the people on this injunction will be involved in those trials --

MR JUSTICE COTTER: In the August and September?

MR LAURIE: In August and September --

B MR JUSTICE COTTER: I think the likelihood is it will be in October. In fact, I can say a very highly likelihood it will be in October.

C MR LAURIE: The problem is I don't know what dates the other people have got, if you understand what I mean, so there may be other cases going on, so there will need to be an element of checking with other people. You wouldn't want to find out at the very last moment --

MR JUSTICE COTTER: What I would do in relation to that is, and I don't know whether Ms Stacey's put it in or not, is I will --

D MS STACEY: The listing paragraph, that's what (Inaudible) 16, which I think doesn't deal with the point you have in mind.

E MR JUSTICE COTTER: No, it doesn't. The point I have in mind is wording along these lines, "Liberty to apply in the first instance by email copied to the other parties for variation of the directions" to me. What does that do, it simply gives you -- rather than bouncing around between the many judges here, it gives one judge, it makes it easier, because that one judge understands the case and will then go and speak to listing if there is a difficulty. Otherwise it just bounces around between different judges and you could end up with a judge who's no idea at all about this litigation and doesn't understand the importance of, say, for example, F being involved in a criminal trial, whereas I do.

MS STACEY: Yes, I can put that --

MR JUSTICE COTTER: So if you put that in, that means I'm contactable in relation to this by email in the first instance, and I will deal with those matters.

G MS STACEY: That's fine, thank you.

MR JUSTICE COTTER: I think that's the best way we can protect that. It's a good point to raise, but I think that's the best way to deal with that.

H MS STACEY: If I can then -- so paragraph 5 is the point about the longstop.

Paragraph 9 is the next change, where we've inserted it would record that I will be content (Inaudible) service date be extended.

A MR JUSTICE COTTER: Yes.

MS STACEY: So that's that, and we have given them 30 April to (Inaudible) in the circumstances --

B MR JUSTICE COTTER: So you reckon as it's a longer period, Mr Laurie, it's an extension of time for people to do things. It's not cutting it down, it's extending it. Yes.

MS STACEY: 10, we've just tweaked it slightly so that the defendants in addition to any claims to be heard (Inaudible) their defence by no later than 15 May, and I would just (Inaudible) those last two words.

C MR JUSTICE COTTER: Yes.

MS STACEY: 11, it's the wording (Inaudible) it up, if you like:

D "Any defence not filed [acknowledgment of defence in accordance with 9 and 10, that should say] should not be entitled to defend the claim that is being heard or take any further role."

That's the red line.

MR JUSTICE COTTER: Yes.

MS STACEY: 12:

E "If defences are filed [so there's a qualification] in accordance with 10, then we shall file and serve our replies by 19 June."

The dates haven't changed there.

F 13 again, "If defences are filed, claimants shall ...", I have taken out, "Updating evidence in response by 3 July".

MR JUSTICE COTTER: Mm-hmm.

MS STACEY: 14:

G "Any defendant who has filed acknowledgment of defence in accordance with those paragraphs shall file any evidence --"

MR JUSTICE COTTER: Good, yes.

H MS STACEY: 15, that is the older(?) paragraph, you see I have struck it out just above the heading "Service of this order" further down the page, and I've brought it up so we know what the position is before it's listed. So any other person who wishes to vary/discharge shall apply -- just let me read that and see what (Inaudible).

MR JUSTICE COTTER: Yes, that's what I had in mind.

A MS STACEY: Yes, so that's another red line. We have slotted it in before the listing so that at the time it's being listed -- that's the next paragraph, paragraph 16 -- we have put in, you'll see there:

B "Two and a half days provisional time estimate [we've inserted the word "provisional" in front of time estimate] two and a half days (which assumes a fully contested hearing) or such shorter time estimate that the court considered appropriate if those paragraphs have not been complied with."

Now, I didn't have your directions variation proposal in mind there, so I wasn't quite sure how it should work.

C MR JUSTICE COTTER: The matter should be put back before me for review of time estimate, shouldn't it?

D MS STACEY: Yes, that seems sensible. But what I -- if one of the named defendants complies and the others don't, it's likely we won't need two and a half days, but you might need a little bit longer to --

MR JUSTICE COTTER: Yes, but I can consult people on that. What I have is control over it --

MS STACEY: My Lord, you might say that the claim should be listed for final hearing for a time estimate to be determined by your Lordship.

E MR JUSTICE COTTER: Yes.

MS STACEY: Yes.

MR JUSTICE COTTER: So you have this. I will see what the argument is and I will tailor the amount of court time for it on that.

F MS STACEY: Right, so we will email you with our position following an application by the claimants as to an appropriate time estimate.

MR JUSTICE COTTER: My advice to you, Ms Stacey, is always try and rope in a judge if you can to do this, because continuity is a big issue.

G MS STACEY: No, my Lord, I am with you, thank you, and we will. So I'll make that tweak to paragraph 16, I'll insert, "Liberty to apply" by an email provision at the end of the directions above the headings of this order.

MR JUSTICE COTTER: Yes.

H MS STACEY: And the rest I think stands. Then one other change I should deal with (Inaudible) attention to that on the penultimate page, paragraph 20F.

MR JUSTICE COTTER: Yes, I have it.

MS STACEY: We forgot to put in the other method, social media references --

MR JUSTICE COTTER: Yes, fine. Well, these are such complicated orders.

MS STACEY: So what we will do is replicate those across all three orders, my Lord,
and email them across to your clerk.

MR JUSTICE COTTER: Okay.

MS STACEY: Unless there is anything else I can help you with.

MR JUSTICE COTTER: Mr Laurie.

MR LAURIE: Sorry, just for the benefit of (Inaudible), because obviously I got it
wrong last time, who do I have to -- who do we defendants have to communicate
with to indicate that we are complying with these --

MR JUSTICE COTTER: Well, the position is under the draft order when you get it, you
will have to have a look at the provisions that are set out "Directions to final
hearing". That's all you're interested in, okay?

MR LAURIE: But whom do we communicate to do that?

MR JUSTICE COTTER: Well, there are -- in all civil proceedings when proceedings
are issued, you need to keep the court in the loop and primarily deal with the court,
all right? So the idea of an acknowledgment of service is that the court and the
other side both understand that, and acknowledgment of service means I have the
proceedings and I intend to be involved in them. Likewise in relation to evidence,
yes, the court and the other side.

Essentially what I have tried here, what I'm trying to do, is give a structured
opportunity to do that. The time for the acknowledgment of service has been
extended so people still have the opportunity to do that, and that's just a form. In
relation to the defence, it's 15 May, okay, in relation to that, and I'm going to say
something in a moment which we've not touched so far, but I suspect because of
my involvement in other cases, Ms Stacey sees coming down the track in a minute
anyway

So that's 15 May in terms of defence. Then there is an ability to file evidence,
okay, and then there is the hearing, which will be determined by me as to when it's
going to be. That's for the defendants. For anyone who is not a defendant but
wants to be heard in that, they have to notify again the court and the other side by
3 July. I have inserted that because I can't be in a position properly whereby

A I think, "Right, okay, I know how long this hearing's going to take, it's going to take a day", and then somebody has a whole range of legitimate arguments, which is -- you never had an argument you wanted to raise, and fine -- and I have the time estimate wrong. I need to know what the hearing's about, and it seems to me 3 July perfectly adequate to give people sufficient time, bearing in mind how long this has been going on for, to take a view as to whether they're going to involve themselves or not.

B Does that help?

MR LAURIE: Yes. I'm more worried about the actual technicalities of who do I contact.

C MS STACEY: If Mr Laurie's content to communicate with the court or the claimant, I think the answer is both.

D MR JUSTICE COTTER: Both -- sorry, I should have said -- so my criticism which you got round earlier was in terms of the application to make your submission which you made, you should have told the court. Then what could have happened is the court -- me, my clerk who helps me -- will then email you and say, "Do you have any written submissions, Mr Laurie, anything you want me to read" -- are you with me? There will be an element of communication regardless of what the claimants say to you because at the end of the day, I have to try and reach a conclusion. So it's both, if in doubt, both.

E MR LAURIE: So will someone give me an email address after this?

MR JUSTICE COTTER: For the court or --

MR LAURIE: Yes, for the court, yes. I have --

F MR JUSTICE COTTER: Yes, we'll -- we can give an indication as to how you communicate with the court.

G Right, okay. In these cases, essentially the key is in the number. Whatever you do, when you write to the court at this address, providing you have a number. But there are also methods of uploading documents as well, but ... stay around and we'll deal with that separately.

H Now what did I want to raise that's not been raised so far in undertakings is what I wanted to raise. I made a sort of passing reference to this, and it's something I have dealt with before as to what undertakings do and don't do. An undertaking is a promise to the court not to engage in the behaviour covered by the

A order. Now (Inaudible) says if there are criminal proceedings, why do you need civil, okay? By similar parity, if someone's promising to do something, why do you need an order, yes? The promise will very often be sufficient in injunctions generally, and the form of that is not something that anyone should find frightening. That can be dealt with, if necessary, by me.

B Why do I say that? Because in other cases -- not this, but in other cases -- people have been concerned about wordings provided by claimants -- not this claimants, but other claimants -- that they're trying to be clever and they're trying to ensnare -- wider restrictions. I can deal with those concerns and have dealt with them in other cases, if people want to. They don't want to be C defendants, they don't want to take part, they don't want any risks of any costs or anything at all. They just want to say, "Right, okay, I've had enough of this. I'm going to engage in lawful activity, and I want out". Undertakings are the way to disappear off this list of defendants in the briefest way.

D That's done through contacting the claimant, and if issues arose in relation to that, at least until I'm looking at it -- May, okay. I don't know whether we should reflect that in the order, possibly not, it's very difficult, but I think it's part of my ongoing case management.

E MS STACEY: My Lord, yes, I have no objections to that. You should know, and you raised it yourself, given I was in the *National Highways* case where the (Inaudible) undertaking was attached to the judgment, and we had that back and forth about the form and we adopted exactly the same form of undertaking, written to them and then chased(?) to the end. So it's the same form that your Lordship has F (Inaudible).

MR JUSTICE COTTER: Yes, fine, thank you. I had forgotten that.

G But what I'm saying is I will deal with that if anyone wants to give an undertaking and ask they shouldn't be frightened about it. It's easy to be, and I understand how overawed some people -- as you said, you yourself, although you've articulated the point very succinctly and very well, you're an engineer, not a lawyer. I recognise that I'm a lawyer, not an engineer, and I would be equally H frightened by some of the things that you can do.

I reflect that, I've got that, and I've tried to reflect that in the way I deal with people, including defendants in these actions. So if there are issues about that,

A I would prefer they were raised by people by email or otherwise, if they relate to undertakings. I mean, we can forget undertakings and just call them promises, that's effectively what they are. They're still subject to the sanctions, the penalty of the court if the court takes the promise. But in terms of anyone who you might (Inaudible) say, "I want out of this, I don't want to be a defendant in it, how do I stop", the reality is that's the answer. That's, as it were, the exit route from this.

B Otherwise what will happen will be if somebody doesn't engage at all, it will still proceed with them as a named defendant. They don't just drop off simply because -- the claimants are highly unlikely to take the view that just because somebody has not responded, that means they're not going to be somebody who should be the subject to the order, they'll (Inaudible).

C That was what I wanted to mention. There's nothing else. Is there anything else I need to cover?

MS STACEY: I don't think so, my Lord.

MR JUSTICE COTTER: Mr Laurie, no?

D MR LAURIE: No.

MR JUSTICE COTTER: Okay. Communication is key --

MS STACEY: One question, sorry. In the order where we said applications to you, I won't put the email address in that, I will simply say, "Mr Justice Cotter by email". I think I can say that.

E MR JUSTICE COTTER: It can just be through the court office, through the listing office, they just forward it on. They just stick it on the CE-file and notify junior to my clerk here, then she just says, "You have some work to do". That's the way it works.

F MS STACEY: (Several inaudible words).

MR JUSTICE COTTER: Yes. So that's the way -- in other words, yes. No one tends to send -- you don't get my email because I don't get things -- I can't be trusted to be accessing my email, in fact after a recent episode, probably very wisely. So it goes to a number of other people who then tell me that's what I have to do.

G MR LAURIE: So I'll get an email address?

MR JUSTICE COTTER: You stay there and we'll get some information to you about communication with the court.

H MR LAURIE: Okay.

MS STACEY: I'll get the draft across before the end of the week.

MR JUSTICE COTTER: Thank you. Okay, all right.

(3.26 pm)

(The hearing concluded)

A

B

C

D

E

F

G

H

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Email: civil@epiqglobal.co.uk

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 (Prichard-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.

IN THE HIGH COURT OF JUSTICE (QBD)

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")

Between

(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

Defendant

and

MS JESSICA BRANCH

INTERESTED PERSONS

SKELETON ARGUMENT ON BEHALF OF

INTERESTED PERSON (MS JESSICA BRANCH)

Essential reading: Skeleton arguments, Witness statement of Interested Person

INTRODUCTION

1. The Claimants in their applications dated 30th March 2023 seek the extension of three injunctions, brought in three separate proceedings, each against no named Defendants. There are also applications to amend their pleadings, and a suggestion that the injunction proceedings be consolidated in some way. They

have listed these applications for 1.5 days. Since there are no named Defendants, it is likely that the court would want to consider carefully the basis of the claim and the terms of any injunctions to be regranted. To that end, Ms Jessica Branch, who has filed a statement dated 24th April 2023, wishes to be heard.

2. Ms Branch is a mother of two young children who attends demonstrations organised by Extinction Rebellion ("XR"), a global movement committed to combatting catastrophic climate change. The role of the fossil fuel industry in contributing to climate change is at the heart of XR's campaigning. She has not participated in any demonstration organised by Insulate Britain or Just Stop Oil.
3. No allegations of tortious conduct are made against Ms Branch. There is nothing in her statement that would suggest that she intends to behave unlawfully or tortiously such that the Claimants would wish to make her subject to an injunction. Nevertheless, as a person with a sincere and genuine concern that lawful protest against the Claimants' activities should be permitted and effective, Ms Branch wishes to be heard on the three injunctions. Ms Branch does not wish to become a named Defendant, but wishes to be heard. In one sense, she might already be a party, in the sense that the Claimants have made everyone in the world a potential party. She is, however, someone who is "directly affected" by this, so would be entitled to apply to be treated as an interested Person pursuant to CPR 40.9, or simply heard *de bene esse*. It is not known whether or not the Claimants would oppose this: submissions are made below about why it is appropriate for the court to permit such intervention, whether pursuant to CPR Part 40.9 or otherwise.
4. Ms Branch raises concerns over the following matters:
 - i) The Claimant seeks injunctive relief on the basis of claims which do not establish such relief, and which, on the fuller analysis that can now be provided than was possible for the judges asked to grant these complex injunctions under emergency conditions, disclose no reasonable cause of action;

- ii) The Claimant wrongly seeks to restrain lawful protest on the highway and other land to which the public have access;
- iii) The test for a precautionary (*quia timet*) injunction is not met, and the Claimants have not apprised the court of the proper test;
- iv) The terms are overly broad and vague, so objectionable due to uncertainty;
- v) Discretionary relief should not be granted;
- vi) The orders have a disproportionate chilling effect.

BACKGROUND

5. The Claimants are various corporate emanations of Shell. Shell is an oil and gas “supermajor” and by revenue and profits is one of the largest companies in the world. This is relevant:
 - (i) when the court considers the resources available to the Claimants in this litigation and beyond, and the extent to which it is fair, one year into these injunctions, to consider the extent to which the Claimants have still not properly formulated their case;
 - (ii) why, since it is one of the major global producers of greenhouse gas emissions, that environmental protestors may legitimately wish to protest against its activities.
6. The Claimants seek injunctions to restrain “persons unknown” from various activities at various places. One relates to Shell Oil Refinery in Warwickshire. Another set of proceedings relate to petrol stations across England and Wales. The third relates to acts of protest at the Shell Headquarters (“Shell Centre Tower”) in central London.

STANDING, BENEFIT TO COURT OF MS BRANCH BEING HEARD

7. These are injunctions which bind everybody but where nobody has been served or heard, it is hoped that the court would be assisted by arguments being put forward from persons other than the Claimants. It is of benefit to the court, and may allow the court to feel more confident in its conclusions, if it hears argument from persons other than the Claimants. In *Ineos v Persons Unknown* [2017] EWHC 3427 (Ch), Morgan J (in his judgment on costs following his earlier decision on the substance) and in a case in which the named defendants only became named defendants at the Claimant's insistence, found that:

“the opposition presented by the Sixth and Seventh Defendants to the Claimants’ application lengthened the hearing (as compared with a case where no one appeared on behalf of the Defendants) but the participation of the Sixth and Seventh Defendants was of assistance to the court in a case of public importance” (at [8(4)])

8. Ms Branch seeks to make representations on the draft order without being made a party to the claim. It is submitted that the court can just hear her. Alternatively, the court may consider that she is someone who is “directly affected” by any judgment or order or variation of the existing order that the court will be making, as to which CPR 40.9 states:

Who may apply to set aside or vary a judgment or order

40.9 A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

9. The application of this provision to protest injunctions sought against persons unknown was considered by Bennathan J in *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (QB). An application was made by a person who was not a named defendant who gave evidence that “the terms of the order sought are so wide as to prevent protests that are lawful and, more specifically, set out her concern that they might catch people such as her who, while not involved with [the named protest groups] might protest near some of [the sites specified in the draft order] and find herself inadvertently caught up in contempt

proceedings” (at [21]). Bennathan J permitted representations to be made under CPR 40.9 for the following reasons:

- “(1) The scenario suggested by [the applicant], in her specific concern, is not fanciful and would amount to a sensible basis to regard her as “*directly affected*”.
- (2) Even absent that most direct connection, in a case where an order is sought for unnamed and unknown defendants, and where [as here] Convention rights are engaged, it is proper for the Court to adopt a flexible approach and a general concern by a person concerned with the political cause involved could, perhaps only just, fit within the term. To take an example far removed from the facts of this case, a member of a proselytising religious group who only attended their local place of worship *might* nonetheless be seen as directly affected by an order banning his co-religionists from travelling to seek converts.
- (3) In a case where the Court is being asked to make wide ranging orders and, but for a successful rule 40.9 application, would not hear any submissions in opposition it seemed to me desirable to take a generous view of such applications.” (at [21])

10. The issue was also considered in *Esso Petroleum v Breen* [2022] EWHC 2600, which, like this case, concerned claims for injunctions restricting rights of protest. Ritchie J, at paragraphs 41 – 45 of his judgment, set out relevant factors. The interested person was permitted to make submissions on a proposed injunction under CPR 40.9 without being made a party to proceedings.
11. Accordingly, by whichever of these two routes is preferable, the court is invited to receive the submissions and arguments from Ms Branch.

INJUNCTIVE RELIEF AND PROTESTS

12. In *Canada Goose v Persons Unknown* [2020] EWCA Civ 303, [2020] 1 WLR 2802, the Court of Appeal, in a joint judgment from the then Master of the Rolls, David Richards LJ and Coulson LJ considered some of the issues arising in protest injunctions brought against “persons unknown”. As will be discussed below, subsequent cases have revised some of the decision reached in that case. However, nothing has been said to undermine paragraph 93 of the judgment, where the court said:

“As Nicklin J correctly identified, Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those

affected are not confined to Canada Goose, its customers and suppliers and protesters. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, *Dulgheriu v Ealing London Borough Council* [2019] EWCA Civ 1490, [2020] 1 WLR 609. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.”

13. The Claimants in this case are asking a judge of the King’s Bench Division to maintain injunctions based on claimed private law rights. The circumstances in which those private law rights provide an entitlement to relief are highly controversial in any case, and in this case, do not justify the continuation of the injunctions granted.
14. It has been accepted by the Claimants, and was, for instance, mentioned in submissions made to Jeremy Johnson J in the “petrol stations” claim, that Article 10 and Article 11 ECHR apply to this claim.
15. Articles 10 and 11 of the European Convention on Human Rights state:

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

16. Articles 10 and 11 together supplement the common law and serve to protect the right to protest. Since the court is a public authority for the purposes of section 6 of the Human Rights Act 1998, it is unlawful for the court to act in a way which is incompatible with these rights. This must therefore, along with the other principles upon which discretionary remedies are either granted or withheld, have a bearing on whether the court maintains an injunction restricting protest.
17. Articles 10 and 11 together contain important protections on the right to protest. It is notable that, as might be thought is common sense, that it is not just the right to speak freely, but the right to demonstrate and associate with others. A protest involving one person standing with a placard, such as the man who used to walk along Oxford Street with a sign saying, in capitals, “LESS LUST FROM LESS PROTEIN. LESS FISH, BIRD, MEAT, CHEESE, EGG, BEANS, PEAS, NUTS AND SITTING” may be taken less seriously than a million people turning up to protest against the Iraq War. Numbers, locale and methods are all important.
18. It is also the essence of protest that many, including those in power, will regard it as unwelcome. As Laws LJ stated in *R(Tabernacle) v Secretary of State for Defence* [2009] EWCA Civ 23:

“Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.” (at [43])
19. In *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105, the House of Lords unanimously determined that the police had acted unlawfully when they had intercepted coaches conveying protestors from London to a demonstration at a military base at Fairford, then required the coaches to turn around from a motorway services and take all passengers back to London. These events were taking place at the time of tensions around the Iraq War and in connection with an airbase from which American planes were likely to fly. Lord Bingham gave the principal speech. His summary of the context is at paragraphs 3-7. The situation was quite extreme: see Lord Carswell (in his concurring speech) at paragraphs 103. He referred to the situation faced as “quite possibly

extending to acts of serious sabotage” (at a military base) and where in that same paragraph he found a risk of “very serious consequences”.

20. Nevertheless, the police actions were unlawful. Lord Bingham set out the common law powers relating to detention to prevent a breach of the peace (paragraph 29- 33), and the necessity test applying before detention is permitted, and set out how the ECHR rights to freedom of expression and freedom of association fit into English law (paragraphs 34- 37). He concluded (paragraphs 39, 43, 45, 56) that the Chief Constable had acted unlawfully.
21. At paragraph 52, Lord Bingham stated that “article 10 and 11 rights are fundamental rights, to be protected as such. Any prior restraint on their exercise must be scrutinised with particular care.” Or, as Lord Carswell said at paragraph 115, “prior restraint (pre- emptive action) needs the fullest justification”. The police, and courts below, had gone wrong and the claimant protestor succeeded in her claim. The court will note that the restrictions had been unlawful even though Lord Bingham was prepared to accept (paragraph 55) that some on the coaches “might wish to cause damage and injury”, or as Lord Carswell , the fact was that the location of any potential disorder was known and could and should be left to the control of police officers in attendance at the scene. This meant that it had been “wholly disproportionate” to restrict the claimant’s rights under Article 10/11 merely because she was in the company of others who might breach the peace: see paragraph 55.
22. *Laporte* represents a decision, at the highest level, supportive of the principle that protest, even disruptive protest is lawful, and the courts cannot prevent it unless there is a clear necessity to do so, and even more importantly, that rights under Article 10 and Article 11 are statutory rights.
23. The Supreme Court considered the application of Articles 10 and 11 ECHR in relation to obstructive protests on the highway in the case of *DPP v Ziegler* [2021] UKSC 23. Of particular note are the Supreme Court’s findings that:
 - i) “intentional action by protesters to disrupt by obstructing others enjoys the guarantees of articles 10 and 11” [70];

- ii) no restrictions may be placed on the enjoyment of Articles 10 and 11 rights “except “such as are prescribed by law and are necessary in a democratic society”” [57];
 - iii) “[a]rrest, prosecution, conviction, and sentence are all “restrictions” within both articles” (ibid.) and there is “a separate evaluation of proportionality in respect of each restriction” (para 67);
 - iv) each of those restrictions will only be “necessary in a democratic society” if it is proportionate ([57]);
 - v) the “determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case” [59];
 - vi) “deliberate obstructive conduct which has a more than de minimis impact on others still requires careful evaluation in determining proportionality” [67];
 - vii) “both disruption and whether it is intentional are relevant factors in relation to an evaluation of proportionality” [70];
 - viii) however, “there should be a certain degree of tolerance to disruption to ordinary life, including disruption of traffic, caused by the exercise of the right to freedom of expression or freedom of peaceful assembly” [68];
24. The Supreme Court in *Ziegler* set out “*various factors applicable to the evaluation of proportionality*” at [72-78]. However, the Court underscored that “*it is important to recognise that not all of them will be relevant to every conceivable situation*” and that, moreover, “*the examination of the factors must be open textured without being given any pre-ordained weight*” [71].
25. The non-exhaustive list of factors “*normally to be taken into account in an evaluation of proportionality*” [72], include:
- i) the extent to which the continuation of the protest would breach domestic law [72] and [77];

- ii) the importance of the precise location to the protesters [72], it being recognised that *“the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of article 11”* (Sáska v Hungary (Application No 58050/08) at [21], as cited in Ziegler at [76];
 - iii) the duration of the protest [72];
 - iv) the degree to which the protesters occupy the land [72];
 - v) the *“extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public”* (ibid.);
 - vi) whether the views giving rise to the protest relate to *“very important issues”* and whether they are *“views which many would see as being of considerable breadth, depth and relevance”* (ibid.);
 - vii) whether the protesters *“believed in the views they were expressing”* (ibid.);
 - viii) the availability of alternative routes to that obstructed [74];
 - ix) whether the obstruction was targeted at the object of the protest [75];
26. There will be further submissions in relation to *Ziegler* on the topic of protest on the public highway, but for the moment, there are two points to be made. One is a point which ought to be obvious, which is that the engagement of Article 10 and 11 means that any decision by the court to restrict protest must be sufficiently principled and predictable to satisfy the Strasbourg court. The second, from the fact that Article 10 is engaged, is the extent to which section 12 Human Rights Act 1998 elevates the proper threshold for the grant of an injunction to that where the Claimants must establish that they are likely to succeed at trial. Ms Branch submits that these injunctions can only be granted if the test under section 12 (3) is satisfied.

SUBMISSIONS ON THE APPROPRIATE TEST TO BE MET, AND THAT SECTION 12(3) REQUIRES THE CLAIMANT TO PROVE THEY ARE LIKELY TO SUCCEED)

27. Section 12 of the Human rights Act 1998 states:

12 Freedom of expression.

- (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
 - (a) that the applicant has taken all practicable steps to notify the respondent; or
 - (b) that there are compelling reasons why the respondent should not be notified.
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

28. The Claimants submit that section 12(3) does not apply in the present case. They rely on what they submitted, and which Johnson J accepted, in one of the cases under consideration here. In *Shell Oil v Persons Unknown* [2022] EWHC 1215 (QB).

29. The Claimants are wrong about that. Not only have a number of High Court judges decided that the section 12(3) test does apply generally in cases concerning protest (as did, in fact, the judgments underpinning the Haven and Shell Centre Tower injunctions in this case), but the decision of the Court of Appeal in *Boyd v Ineos* holds that, was binding on Johnson J and is binding on the court now considering the renewals.

30. In *Shell Oil*, Johnson J stated:

67. Nothing in the injunction explicitly restrains publication of anything. Nor does it have that effect. The defendants can publish anything they wish without breaching the injunction. The activities that the injunction restrains do not include publication. It does not, for example, restrain the publication of photographs and videos of the protests that have already taken place. Nor does it prevent anyone from, for example, chanting anything, or from displaying any message on any placard or from placing any material on any website or social media site.

...

69. The word “publication” does not have an unduly narrow meaning so as to apply only to commercial publications: “publication does not mean commercial publication, but communication to a reader or hearer other than the claimant” – *Lachaux v Independent Print Limited* [2019] UKSC 27 [2020] AC 612 *per* Lord Sumption at [18]. Lord Sumption’s observation was made in the context of defamation, but Parliament legislated against this well-established backdrop. Section 12(3) should be applied accordingly so that “publication” covers “any form of communication”: *Birmingham City Council v Asfar* [2019] EWHC 1560 (QB) *per* Warby J at [60].

70. The meaning set out by Lord Sumption in *Lachaux* is sufficient to achieve the underlying policy intention. There is therefore no good reason for giving the word “publication” an artificially broad meaning so as to cover (for example) demonstrative acts of trespass in the course of a protest. Such acts are intended to publicise the protestor’s views, but they do not amount to a publication.

71. Further, the wording of section 12 itself indicates that the word “publication” has a narrower reach than the term “freedom of expression”. That is because the term “freedom of expression” is expressly used in the side-heading to section 12, and in section 12(1), and is used (by reference (“no such relief”)) in section 12(2) and section 12(3). The term “publication” is then used in section 12(3) to signify one form of expression. If Parliament had intended section 12(3) to apply to all forms of expression, then there would have been no need to introduce the word “publication”.

72. I therefore respectfully agree with the observation of Lavender J in *National Highways Limited v Persons Unknown* [2021] EWHC 3081 (QB) at [41] that section 12(3) is “not applicable” in this context.

73. It is, though, necessary to address the decisions in *Ineos Upstream v Persons Unknown* [2017] EWHC 2945. That case concerned an injunction that appears to have been similar in scope to the injunction in the present case. At first instance, Morgan J held (a) that section 12(3) applied (at [86]) and (b) the statutory test was satisfied because if the court accepted the evidence put forward by the claimants, then it would be likely, at trial, to grant a final injunction (at [98] and [105]). As to the applicability of section 12(3), Morgan J found the injunction that he was considering might affect the exercise of the right to freedom of expression. That was plainly correct, because the injunction restrained activities that were intended to express support for a particular cause. It does not, however, necessarily follow that section 12(3) is engaged (because, as above, “publication” is not the same as “expression”). There does not appear to have been any argument on that point – rather the focus was on the question of whether there was an interference with the right to freedom of expression. To the extent that Morgan J in *Ineos* and Lavender J in *National Highways* reached different conclusions about the applicability of section 12(3) in this context, I respectfully adopt the latter’s approach for the reasons I have given.”

31. Contrary to what Johnson J said, the Court of Appeal decision in *Boyd v Ineos* [2019] 4 WLR 100 is clear authority that section 12(3) does apply to cases such as the present. Permission to appeal was explicitly granted in relation to whether the trial judge ‘failed adequately or at all to apply section 12(3) of the Human Rights Act 1998’ (see [17]). In *Ineos*, the Court of Appeal stated:

“47. ...The only injunctions left are those restraining trespass and interfering with the claimants’ rights of way and it will be rather easier therefore for the claimants to establish

that at trial publication of views by trespassers on the claimants' property should not be allowed.

48. Nevertheless, I consider that there is force in Ms Williams's [counsel for Appellant's] submission. It is not just the trespass that has to be shown to be likely to be established; by way of example, it is also the nature of the threat. For the purposes of interim relief, the judge has held that the threat of trespass is imminent and real but he has given little or no consideration (at any rate expressly) to the question whether that is likely to be established at trial. This is particularly striking in relation to site 7 where it is said that planning permission for fracking has twice been refused and sites 3 and 4 where planning permission has not yet been sought. " (emphasis added)

32. There is no suggestion in this passage that demonstrations consisting of acts of trespass or similar should not fall within the scope of 'publication' for the purposes of s12(3).

33. In *Birmingham City Council v Afsar* [2019] EWHC 1560 (QB) Warby J stated:

"But I would go further. I am satisfied that it would be quite wrong to treat the word "publication" in s 12(3) as having a limited meaning, restricted for example (as Mr Manning's submission seemed to imply) to commercial publication. It is hard to see how that such an approach could be rationally defended. It would give commercial publishers preferential treatment compared to other defendants, such as individuals communicating for private purposes, on social media. As everybody knows, some social media accounts have larger readerships than some paid-for newspapers. But there is a more fundamental point. In the law of defamation, "publication does not mean commercial publication, but communication to a reader or hearer other than the claimant": *Lachaux v Independent Print Ltd* [2019] UKSC 27 [18] (Lord Sumption). This is generally true of the torts associated with the communication of information, sometimes known as "publication torts", and the related law (see the discussion in *Aitken v DPP* [2015] EWHC 1079 (Admin) [2016] 1 WLR 297 [41-62]). Parliament must be taken to have legislated against this well-established background. Section 12(3) applies to any application for prior restraint of any form of communication that falls within Article 10 of the Convention. This is appropriately reflected in the language of the Practice Guidance, quoted above." (at [60], emphasis added)

34. The proper test for the application of s12(3) HRA 1998 is therefore whether an order restrains: "*any form of communication that falls within Article 10 of the Convention*". Whilst Johnson J is correct that this is narrower than simply acts which fall within the scope of Article 10 ECHR, this is only to the extent that the act must additionally be a "form of communication". Therefore, whilst an act of expression that was not intended to be communicated to any audience would not be included, the application of s12(3) is not otherwise restricted.
35. It is quite clear that the acts restrained by the proposed orders include conduct which falls within Article 10 of the European Convention. The scope of Article 10 includes all forms of peaceful protest. As the European Court stated in *Murat*

Vural v Turkey (App. No. 9540/07), pouring paint on a statute may be seen, from an objective point of view, as an expressive act. This is the correct test:

“an assessment must be made of the nature of the act or conduct in question, in particular of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act or carrying out the conduct in question.” (at [54])

36. Once an act is categorised as “*expressive*”, it is only if it is violent, incites violence or has violent intentions that the conduct will be considered to fall outside the protection of Article 10. This has recently been confirmed in *AG Reference on a Point of Law (No 1 of 2022)* [2022] EWCA Crim 1259 (at [96]).

37. It is important to note that the manner and form of a protest may be an integral part of the message that is sought to be communicated. As Laws LJ stated in *Tabernacle*:

“... this “manner and form” may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protesters’ message; it may be the very witness of their beliefs.” (at [37])

38. The above are all general points to be made from the protest context. The court may or not agree with those observations. There are interesting points to be made about whether any form of visible, or performative protest (e.g. a “die in”) amounts to “publication”. Ms Branch would submit that it does, and submissions will be made on that. However, what is obviously very clear in this case is that the order sought, obtained from Johnson J and currently under consideration in these applications contains a prohibition on: “writing in any substance on any part of a Shell Petrol station” (para 3.4).

39. It is simply absurd to contend that “writing” something on a publicly visible structure such as a petrol station does not amount to publication. It certainly would amount to publication sufficient to make out one of the components for a claim in libel: see Clerk and Lindsell, Chapter 21, section 5, where there is a discussion of cases that establish that proof of posting a postcard will amount to “publication” for the purposes of a libel claim.

40. Moreover, there is no reason why a protest on the highway outside a Shell petrol station which symbolically blocks access for a limited duration where this is done

with the intention and knowledge that it is witnessed by others cannot be a form of communication. The demonstrators acts are as much a communication of a message to their audience as it would be if they were to use a megaphone of loud hailer. Indeed, the absence of words in a silent “die-in” protest is an integral part of the message conveyed.

41. It is respectfully submitted that Johnson J fell into error when he stated: “The activities that the injunction restrains do not include publication. It does not, for example, restrain the publication of photographs and videos of the protests that have already taken place.”. First, it is artificial to draw a distinction between the occurrence of a performative demonstration and transmission of videos and images of the event to others. This is analogous to stating that a prohibition on actors speaking dialogue which is intended to be filmed for tv is not a restriction on publication because it is not a restriction on the capture and transmission of images. Second, the fact that images of previous protests may be published is irrelevant. Allowing repeats of series one of a tv show to continue to be broadcast does not mean that a prohibition on filming series 2 is not a restraint on publication.
42. Contrary to the decision of Johnson J, the approach in *Ineos* and *Birmingham CC v Afsar* has recently been followed in the majority of recent decisions relating to injunctions restraining disruptive protest against oil companies (see the ruling of Mr Justice Bennathan in *Esso Petroleum v Persons Unknown* [2022] EWHC 1477 (QB) at [7]). Unfortunately, there are some cases in which these *djcta* from Johnson J have been followed, and this is why, since it is submitted that the Johnson J approach is not correct, some time has been spent on this issue.
43. The Court is respectfully invited to follow the binding authority of *Ineos* and the consistent line of High Court decisions to the same effect and to apply Section 12(3) HRA in the present case. The Claimants are required to show that they are “likely” to succeed at trial.
44. Ms Branch submits that the Claimants are not “likely” to succeed at trial. She also submits that they do not have even a *prima facie* case of the sort sufficient

to make out the first component of the *Anisminic* test. This important point, which goes to the root of the proceedings is now addressed.

THE CLAIMANTS' LACK OF A CASE

45. The Claimants rely on a claim in conspiracy to injure by unlawful means. The Amended Particulars of Claim do not specify the legal nature of the underlying unlawful means on which the Claimants rely. They are similarly not specified in the Claimants Skeleton Argument for the renewal hearing dated 20.04.23. The Skeleton Argument for the initial hearing before Johnson J identified them as: Trespass to Land, Trespass to Goods and Private Nuisance¹. Those torts do not, however, feature in the Particulars of Claim or the proposed Amended Particulars of Claim.

46. The Claimants accept that in relation to much of the land covered by the injunction the torts are not actionable at the suit of the Claimant. The Claimants skeleton argument for the hearing before Johnson J stated:

“for the purpose of this application C relies on the fact that all of the acts relied upon would be actionable in tort by the person in possession of the particular Shell Petrol Station, or the owner of the relevant equipment. However, C is not in legal possession of all of the Shell Petrol Stations, and does not own all of the equipment upon them” (at [11])

47. The basis for the claim in unlawful means conspiracy are therefore torts actionable only by third-parties (for convenience “third-party torts”).

48. It is important to make some general points on the underlying tort before returning to the claim in unlawful means conspiracy.

Public highway

49. The Claimants also allege that the Tower injunction and Haven injunctions are supportable by reference to claims in public nuisance. At paragraph 25 of their skeleton argument, they submit that the claim for an injunction in public nuisance is justified on the basis granted by Morgan J in the *Ineos* case. It is

¹ Claimant’s skeleton argument for hearing before Johnson J dated 03.05.22 at [10].

regrettable to say the least that this submission was made, particularly in a case where there are no named defendants before the court. The Claimants must know that that injunction was discharged by the Court of Appeal in *Boyd v Ineos*, and that Morgan J's decision on that could not stand.

50. There are similar significant problems in this injunction remaining in force on this basis. Insofar as the injunction covers land which is a public highway, it should be noted that all of the underlying torts require the defendants' use of the highway to be unreasonable.
51. The public have a right of reasonable use of the highway which may include protest (*DPP v Jones* [1999] 2 AC 240). This is so even when protests deliberately obstruct other road users. Ultimately, the issue is one of the proportionality of interference with rights protected under ECHR 10 and 11 when prohibiting such protest (see the High Court decision in *DPP v Ziegler* [2019] EWHC 71 (Admin)). The Supreme Court in *DPP v Ziegler* [2021] UKSC 23 emphasised the fact specific nature of the assessment of proportionality. Similarly, the Court of Appeal in *INEOS* stated:

“the concept of ‘unreasonably’ obstructing the highway is not susceptible of advance definition... that is a question of fact and degree that can only be assessed in an actual situation and not in advance” (at 40)).
52. It is wrong to view the right of the public to pass and repass as having primacy over the right to protest on the highway. Instead, there is a need to “balance the different rights and interests at stake” (see the High Court ruling in *DPP v Ziegler* [2019] EWHC 71 (Admin) at [108]).
53. Clearly it cannot be asserted any form of obstructive protest on the highway will constitute a trespass without regard to the degree and impact of the obstruction.
54. Similarly protests which do not cause undue interference with the rights of others do not fall within the definition of either public or private nuisance.
55. Whilst the owner of a property may enjoy a common law right of access to the highway (now to a large extent qualified by statute), it is not the case that *every*

interference with such access will constitute an actionable private nuisance. As Lord Adkin stated in *Marshall v Blackpool Corp* [1935] A.C. 16:

“The owner of land adjoining a highway has a right of access to the highway from any part of his premises. ...The rights of the public to pass along the highway are subject to this right of access: just as the right of access is subject to the rights of the public and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway.” (at [22], emphasis added)

56. Insofar as the general obligations as to nuisance on the highway are referred to, in *Harper v G N Haden & Sons* [1933] Ch 298, Romer LJ said:

"The law relating to the user of highways is in truth the law of give and take. Those who use them must in doing so have reasonable regard to the convenience and comfort of others, and must not themselves expect a degree of convenience and comfort only obtainable by disregarding that of other people. They must expect to be obstructed occasionally. It is the price they pay for the privilege of obstructing others." (at 320, emphasis added)

57. This reflects the general features of the tort of private nuisance, it was described by the House of Lords in *R v Rimmington* [2005] UKHL 63 as:

"Thus the action for private nuisance was developed to protect the right of an occupier of land to enjoy it without substantial and unreasonable interference." (at [5], emphasis added)

58. It is therefore not the case that every interference with access to, or passage along, the highway, for whatever duration and extent, will be tortious. Similarly, not every such obstruction will be lawful. It is all a matter of fact and degree
59. The important point is that the underlying claims relied on by the Claimant to establish the unlawful means conspiracy rest on an assessment of disruptive protest on the highway as unreasonable. It is far from clear that protests which disrupt minor roads or pavements/footpaths passing near Shell Petrol Stations will lead to a viable civil claim. Similarly, where the extent of the interference with more major roads is not a total and extended halting of traffic the outcome of balancing the extent of disruption against the defendants rights under Article 10/11 ECHR cannot be determined in advance.

Non-public highway land

60. Insofar as the injunction covers land which is not part of the public highway, the Claimant asserts (though does not plead) claims in trespass and private

nuisance, albeit that the Claimants seem to accept that they do not have sufficient rights of possession to bring a claim in its own name for trespass or private nuisance.

61. Given the complexities of land ownership in multi-retailer commercial environments, it cannot confidentially be asserted that the landowner will not tolerate the presence of those protesting against the Claimant in each and every case where this might occur. It is therefore unclear that claims in trespass and private nuisance will be made out.

Unlawful Means Conspiracy and Third Party Torts

62. As a general point, the reliance on wide-ranging economic torts such as conspiracy to injure through unlawful means was discouraged by the Court of Appeal in *Boyd v Ineos* [2019] 4 WLR 100. The trial judge granted an injunction based on torts of trespass, private nuisance, public nuisance and conspiracy to injure by unlawful means (at [11]). The Court of appeal stated:

“39. Those important points about the width and the clarity of the injunctions are critical when it comes to considering the injunctions relating to public rights of way and the supply chain in connection with conspiracy to cause damage by unlawful means. They are perhaps most clearly seen in relation to the supply chain. The judge has made an immensely detailed order (in no doubt a highly laudable attempt to ensure that the terms of the injunction correspond to the threatened tort) but has produced an order that is, in my view, both too wide and insufficiently clear. In short, he has attempted to do the impossible. He has, for example, restrained the fifth defendants from combining together to commit the act or offence of obstructing free passage along a public highway (or to access to or from a public highway) by (c(ii)) slow walking in front of the vehicles with the object of slowing them down and with the intention of causing inconvenience and delay or (c(iv)) otherwise unreasonably and/or without lawful authority or excuse obstructing the highway with the intention of causing inconvenience and delay, all with the intention of damaging the claimants.

...

42. Mr Alan Maclean QC for the claimants submitted that the court should grant advance relief of this kind in appropriate cases in order to save time and much energy later devoted to legal proceedings after the events have happened. But it is only when events have happened which can in retrospect be seen to have been illegal that, in my view, wide ranging injunctions of the kind granted against the third and fifth defendants [those based on unlawful means conspiracy] should be granted. The citizen’s right of protest is not to be diminished by advance fear of committal except in the clearest of cases, of which trespass is perhaps the best example.” (emphasis added)

63. The Court of Appeal discharged those parts of the order based on public nuisance and unlawful means conspiracy leaving only those based on trespass

and private nuisance. The clear concern raised was over the use of wide-ranging economic torts to restrain protest rather than the detailed application of torts such as trespass and the like.

64. In *Cuadrilla*, the Court of Appeal accepted that reference to intention *might* in some circumstances be permitted in an injunction and that it would be possible to incorporate prohibitions in an injunction corresponding to the tort of unlawful means conspiracy using reference to intention and effect (at [69]). However, the Court did not endorse the use of the tort of unlawful means conspiracy as a basis for founding injunctive relief in protest cases. In *Cuadrilla*, the Court the prohibitions were made out on the facts from claims in private nuisance. The court in fact described the prohibition corresponding to unlawful means conspiracy as “a different matter” (at [81]). The Court noted that in relation to the particular conduct that formed the basis of the committal hearing: “*Cuadrilla* had no need to rely on the tort of unlawful means conspiracy in seeking to restrain such conduct.” (at [81]).

65. In the initial ruling in the present case Johnson J stated:

“It is only necessary to decide whether the claimant has established a serious issue to be tried as to whether the tort that are herein play may suffice as the unlawful act necessary to found a claim for conspiracy to injure. Those torts involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant (where the petrol station is being operated under the claimant’s brand, selling the claimant’s fuel). Recognising the torts as capable of supporting a claim in conspiracy to injure does not undermine or undercut the rationale for those torts.” (at [29])

66. Notwithstanding the limited threshold imposed by the judge relating to a serious issue to be tried (rather than that under s12(3) HRA 1998 as addressed above) there are a number of flaws with his reasoning.

67. In *OBG Ltd v Allan* [2008] 1 AC 1, Lord Nicholls stated the following (in the context of a claim for causing loss through unlawful means):

“159. The difficulties here are more apparent than real. The answer lies in keeping firmly in mind that, in these three-party situations, the function of the tort is to provide a remedy where the claimant is harmed through the instrumentality of a third party. That would not be so in the patent example.

160. Similarly with the oft-quoted instance of a courier service gaining an unfair and illicit advantage over its rival by offering a speedier service because its motorcyclists frequently exceed speed limits and ignore traffic lights. The unlawful interference tort would not

apply in such a case. The couriers' criminal conduct is not an offence committed against the rival company in any realistic sense of that expression."

68. Whilst "instrumentality" is a "function of the tort" and is therefore a necessary condition for tortious liability via an unlawful means conspiracy, it is not a sufficient condition on which it should be determined whether particular types of unlawful conduct fall within the scope of the tort.
69. In *Customs Comrs v Total Network SL* [2008] AC 1174 the House of Lords considered the elements of the tort of conspiracy to injure through unlawful means. The case concerned a carousel fraud allege to have been committed by the defendant. The Court of Appeal held that this criminal conduct was insufficient to found a claim in unlawful means conspiracy. Reversing the decision on this point, the House of Lords held that in certain circumstances a criminal offence could provide a basis for an unlawful means conspiracy claim. However, there was also a requirement for 'instrumentality': the criminal conduct must be the means by which the claimant has suffered loss. As Lord Mance stated:

"119. Caution is nonetheless necessary about the scope of the tort of conspiracy by unlawful means. Not every criminal act committed in order to injure can or should give rise to tortious liability to the person injured, even where the element of conspiracy is present. The pizza delivery business which obtains more custom, to the detriment of its competitors, because it instructs its drivers to ignore speed limits and jump red lights (Lord Walker in *OBG Ltd v Allan* [2008] 1 AC 1, para 266) should not be liable, even if the claim be put as a claim in conspiracy involving its drivers and directors. And—as in relation to the tort of causing loss by unlawful means inflicted on a third party—there is a legitimate objection to making liability "depend upon whether the defendant has done something which is wrongful for reasons which have nothing to do with the damage inflicted on the claimant": per Lord Hoffmann in *OBG Ltd v Allan*, at para 59."

70. Lord Walker stated:

"94. From these and other authorities I derive a general assumption, too obvious to need discussion, that criminal conduct engaged in by conspirators as a means of inflicting harm on the claimant is actionable as the tort of conspiracy, whether or not that conduct, on the part of a single individual, would be actionable as some other tort ...

"95. In my opinion your Lordships should clarify the law by holding that criminal conduct (at common law or by statute) can constitute unlawful means, provided that it is indeed the means (what Lord Nicholls of Birkenhead in *OBG Ltd v Allen* [2008] AC 1, para 159 called 'instrumentality') of intentionally inflicting harm."

71. It is therefore clear that "instrumentality" is considered as an additional element of the tort of unlawful means conspiracy and not a test as to whether unlawful

acts of a particular character (tortious/criminal etc) can form the basis of the unlawful means tort.

72. The comments of Lord Walker were directly addressed by Lord Sumption in the UKSC case of *JSC BTA Bank v Ablyazov and another (No 14)* [2018] UKSC 19 where he said:

“15 The reasoning in *Total Network* leaves open the question how far the same considerations apply to non-criminal acts, such as breaches of civil statutory duties, or torts actionable at the suit of third parties, or breaches of contract or fiduciary duty. These are liable to raise more complex problems. Compliance with the criminal law is a universal obligation. By comparison, legal duties in tort or equity will commonly and contractual duties will always be specific to particular relationships. The character of these relationships may vary widely from case to case. They do not lend themselves so readily to the formulation of a general rule. Breaches of civil statutory duties give rise to yet other difficulties. Their relevance may depend on the purpose of the relevant statutory provision, which may or may not be consistent with its deployment as an element in the tort of conspiracy. For present purposes it is unnecessary to say anything more about unlawful means of these kinds. “

73. It is therefore explicitly left open whether, and in what circumstances, a claim in unlawful means conspiracy may be founded on a third-party tort. If Lord Sumption had considered that satisfaction of the test of instrumentality would be sufficient to extend unlawful means conspiracy to a third party tort he would have said so (as he did with criminal offences). He explicitly did not.

74. In *Racing Partnerships Ltd v Done Bros Ltd* [2020] EWCA Civ 1300 it appears to have been assumed that the sole requirement of whether an unlawful means conspiracy may be based on a third-party breach of contract/breach of confidence claim is the requirement to fulfil the test of instrumentality. The court did not address the antecedent question, explicitly left open in *Ablyazov*, as to whether an unlawful means conspiracy can in principle be based on a breach of contract/breach of confidence claim. *Racing Partnerships* therefore does not address the concerns addressed by Lord Sumption regarding the extension of unlawful means conspiracy to third-party torts.

75. It is therefore submitted that Johnson J fell into error in the present case when he stated that:

“For the purposes of the present case, it is not necessary to decide whether a breach of statutory duty can found a claim for conspiracy to injure, or whether every (other) tort can do so. It is only necessary to decide whether the claimant has established a serious

issue to be tried as to whether the torts that are here in play may suffice as the unlawful act necessary to found a claim for conspiracy to injure. Those torts involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant (where the petrol station is being operated under the claimant's brand, selling the claimant's fuel). Recognising the torts as capable of supporting a claim in conspiracy to injure does not undermine or undercut the rationale for those torts. It would be anomalous if a breach of contract (where the existence of the cause of action is dependent on the choice of the contracting parties) could support a claim for conspiracy to injure, but a claim for trespass could not do so. Likewise, it would be anomalous if trespass to goods did not suffice given that criminal damage does. I am therefore satisfied that the claimant has established a serious issue to be tried in respect of a relevant unlawful act." (at [29])

76. First, the test of instrumentality is not addressed in this passage. Second, the test adopted for the extension of the tort of unlawful means to third-party torts is that this "does not undermine or undercut the rationale for those torts". It is unclear precisely what is meant by this passage. It appears to suggest that the extension of unlawful means does not undermine the rationale for the torts of trespass to land and private nuisance, and it is unclear why this would be any basis on which to extend unlawful means conspiracy in this way. In any event, there is no authority that this is a proper and lawful basis on which to apply the tort of unlawful means conspiracy to the third-party torts mentioned.
77. In any event, the Claimants have provided scant details of the specific basis of the tortious claims on which unlawful means conspiracy is said to arise in the present case. It is therefore impossible to assess whether the test of instrumentality is met. Finally, in many instances of the prohibited conduct in the present order there is no requirement that the Claimant suffer actual harm (which is an element of unlawful means conspiracy) the prohibited conduct therefore goes well beyond that which would fall within the tort of unlawful means conspiracy.
78. Finally, there has been no consideration of the concerns expressed in *Ineos* over founding in junctive relief in the context of protest on extensive and nebulous claims in unlawful means conspiracy.
79. It is therefore submitted that a claim in unlawful means conspiracy is an improper and inappropriate means to base injunctive relief in the present case.

80. The weakness of the Claimants' position rests not just in the problems with their formulation of the underlying torts, but also due to this being to restrain conduct by persons unknown who have not to date committed tortious acts.

81. Snell's Equity , 30th ed (2000), p 719, para. 45–13 (approved by the Court of Appeal in *Secretary of State for Environment v Meier* [2008] EWCA Civ 903 at [16]) says:

“Although the claimant must establish his right, he may be entitled to an injunction even though an infringement has not taken place but is merely feared or threatened; for “preventing justice excelleth punishing justice”. This class of action, known as quia timet , has long been established, but the claimant must establish a strong case; “no one can obtain a quia timet order by merely saying ‘timeo.’ He must prove that there is an imminent danger of very substantial damage ...” (emphasis added)

82. In *Elliot v Islington LBC* [2012] 7 EG 90 (Ch) the requirements were expressed as:

“the practice of the court has necessarily been to proceed with caution and to require to be satisfied that the risk of actual damage occurring is both imminent and real. That is particularly so when, as in this case, the injunction sought is a permanent injunction at trial rather than an interlocutory order granted on American Cyanamid principles having regard to the balance of convenience. A permanent injunction can only be granted if the claimant has proved at the trial that there will be an actual infringement of his rights unless the injunction is granted.” (at [29], emphasis added).

83. In any event, there is no evidence at all of non-environmental protest groups seeking to carry out activity of the sort prohibited under the order there is hence no basis to broaden the definition of “Persons Unknown” in the manner sought.

84. The common features of all of these claims is that:

- i) They are brought against “persons unknown”;
- ii) One year into these injunctions, and with all the resources available to the Claimants, they do not feel able to allege a claim in tort against any named individual. This is despite the court having given the Claimants the benefit of third party disclosure orders that ought to have helped them to do what any claimant is normally expected to do, and identify against whom they wish to proceed;
- iii) The underlying legal basis of their claims (reflected in the Particulars of Claim and in the proposed Amended Particulars of Claim) appears to be

some sort of claim based on conspiracy to injure. They invite the court to infer that this is a serious matter;

- iv) Despite the seriousness of this matter, the Claimants' Particulars of Claim do not identify any particular conspiracy, nor any actual conspirators, and make no allegations as to the way in which the conspiracy is said to have arisen, or what its objects are.

- 85. Each of these, both individually and in combination, ought to cause the court to be seriously concerned as to the validity of the claims before the court. The gravamen of the case upon which the Claimants seek relief is to be found in paragraph 3.1 of the Particulars of Claim, where it is alleged that "persons unknown will in the future combine to engage inunlawful acts with the intention of disrupting the sale of fuel..." with allegations that this would cause "harm" in paragraph 3.2.
- 86. There are no individuals identified in this conspiracy.
- 87. The Particulars are based on something that the publishers of the Just Stop Oil website have posted there, along with what various "protesters" have done.
- 88. This all discloses a serious conceptual difficulty with the claim. The refusal, or inability, to identify alleged conspirators is something that discloses that there is no legitimate case in conspiracy to injure. The Claimants have not complied with the clear, mandatory obligation in PD16.7.5 applying to a claim based upon agreement by conduct, where, "the particulars of claim must specify the conduct relied on and state by whom, when and where the acts constituting the conduct were done".
- 89. While the courts will allow in certain circumstances claims to be brought against unidentified people, or "persons unknown", this does not mean that claims can be brought against a purely hypothetical defendant. Claims can only be brought for or against someone with legal personality: see *Moosun v HSBC* [2015] EWHC 3308, especially at paragraphs 8-10 (where claims on behalf of children without litigation friends and on behalf of a dog were struck out). At least in *Moosun* the other claimant knew the dog and the children on whose behalves she intended

to make the claim. The Claimants in this case are in a worse position even than that: one year into this claim, the Claimants are not able to sign a statement of truth alleging a case against any named person, or to provide sufficient particulars of the alleged conspiracy in order to comply with the obligation in PD16.7.5.

90. Similarly, the courts cannot allow persons without legal personality to be parties to claims, and will strike out claims brought against persons without legal personality. An important example of that, and in a case seeking injunctive relief against protestors, was seen in *EDO v Campaign to Smash EDO and others* [2005] EWHC 837. The claims brought against an organisation without legal personality were struck out: see paragraphs 43- 45 of Gross J's judgment.
91. Accordingly, the Claimants here cannot create a claim against "Just Stop Oil" or "Extinction Rebellion" or whatever label certain people choose to protest under merely by referring to "Just Stop Oil" in their particulars. They cannot confect a claim in conspiracy by imagining or conjuring up the alleged conspirators, and breach the obligation to identify the conspiracy and case against those conspirators by conjuring up the alleged miscreants. There either is a case, or there is not, and one year into this claim, the Claimants ought to be able to say what it is.
92. It may be that this aspect of the concern is a consequence of the Claimants' decisions in each case to proceed against "Persons Unknown" without regard to the circumstances in which such a method of proceeding might properly be brought. Essentially, there are serious conceptual and practical problems in using "Persons Unknown" in protestor cases, particularly where the tortious conduct alleged or apprehended would be committed away from a defined area or piece of land. Some of these problems were discussed by Nicklin J in *Canada Goose v Persons Unknown* [2019] EWHC 2459 (QB) at paragraphs 149- 150. On appeal, the Court of Appeal ([2020] EWCA Civ 303, [2020] 1 WLR 2802) went on to state that final orders should not be made "in a protestor case" against "persons unknown": see 89- 93. The generality of that proposition cannot be seen, at least at present, as longer completely correct following following the

decision in *London Borough of Barking v Persons Unknown* [2022] EWCA Civ 13, [2023] QB 295_. That case has itself been appealed to the Supreme Court, with arguments heard and judgment awaited.

93. The Court of Appeal in *Barking* decided:
- i) there is *jurisdiction* to make final orders against “persons unknown”: see 119- 121,
 - ii) that the court can grant final injunctions that prevent persons who are unknown and unidentified from trespassing on local authority land (as formulated in the heading between paragraphs 70-71 and precisely set out at paragraph 101).
94. Sir Geoffrey Vos MR also cast some doubt, and indeed, over- ruled, paragraphs 89-92 of the *Canada Goose* case. Those paragraphs from *Canada Goose* form separate sub- headings above paragraphs 79, 83, 84 and 91 of the *Barking* decision.
95. The court will note that paragraph 93 of the *Canada Goose*_ case was NOT discussed, still less over- ruled, in this way. The court in *Barking* was concerned with whether people who set up a camp on a local authority camp can, depending on the evidence, be said to have been provided with proper notification of the terms of an injunction. This case cannot help with the more complex problems of actual notice and how that can be given, in cases involving protest, where some of the acts restrained will be taking place far away from the particular venue.
96. That is particularly with the injunctions here, which are underpinned by the alleged CONSPIRACY (i.e. a state of mind and agreement) with completely unrestricted geographical ambit.
97. Thus the Claimants here face the same hurdle as defeated the claimants in *Boyd v Ineos*. The absence of a proper formulation of their case, and the absence of evidence to support a conspiracy to injure means that they cannot make their case.

TERMS OF INJUNCTION

Legal Framework

98. General principles of proportionality require that an injunction is targeted as closely as practicable on the conduct which constitutes the tortious behaviour. The terms of an order may only prohibit otherwise lawful conduct beyond the scope of the strict tort where it is necessary “in order to provide effective protection of the rights of the claimant in the particular case” (*Cuadrilla Bowland v Lawrie* [2020] EWCA Civ 9 at [50]) and “there is no other proportionate means of protecting the claimants’ rights” (see *Canada Goose* at 78 and 82(5)). Clearly the extent to which an order prohibits lawful conduct must be kept to a minimum.

99. The terms of an injunction must not be unduly vague. In *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 the Court of Appeal stated:

“57. There are at least three different ways in which the terms of an injunction may be unclear. One is that a term may be ambiguous, in that the words used have more than one meaning. Another is that a term may be vague in so far as there are borderline cases to which it is inherently uncertain whether the term applies. Except where quantitative measurements can be used, some degree of imprecision is inevitable. But the wording of an injunction is unacceptably vague to the extent that there is no way of telling with confidence what will count as falling within its scope and what will not. Evaluative language is often open to this objection. For example, a prohibition against “unreasonably” obstructing the highway is vague because there is room for differences of opinion about what is an unreasonable obstruction and no determinate or incontestable standard by which to decide whether particular conduct constitutes a breach. Language which does not involve a value judgment may also be unduly vague. An example would be an injunction which prohibited particular conduct within a “short” distance of a location (such as the Site Entrance in this case). Without a more precise definition, there is no way of ascertaining what distance does or does not count as “short”.

58. A third way in which the terms of an injunction may lack clarity is that the language used may be too convoluted, technical or otherwise opaque to be readily understandable by the person(s) to whom the injunction is addressed. Where legal knowledge is needed to understand the effect of a term, its clarity will depend on whether the addressee of the injunction can be expected to obtain legal advice. Such an expectation may be reasonable where an injunction is granted in the course of litigation in which each party is legally represented. By contrast, in a case of the present kind where an injunction is granted against “persons unknown”, it is unreasonable to impose on members of the public the cost of consulting a lawyer in order to find out what the injunction does and does not prohibit them from doing.” (emphasis added)

100. Even where the strict terms of an order are limited, consideration must be given to any ‘chilling effect’ that the injunction has beyond conduct falling directly

within its terms. This is particularly so for injunctions that are vague or broadly drawn (see *INEOS v Boyd* [2020] EWCA Civ 515 at [40]). The temporary nature of an order may still be disproportionate when the chilling effect is considered (see *Christian Democratic People's Party v Moldova* (2007) 45 EHRR 13).

Terms of Order: Definition of Persons Unknown

101. The proposed definition of persons unknown reads:

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 ENVIRONMENTAL PROTEST CAMPAIGNS WITH THE INTENTION OF DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION

102. Two points are made on the definition of persons unknown:

- i) The tort of unlawful means conspiracy requires both an intention to cause harm and actual harm to arise. Therefore, in order that the order captures only those who have committed tortious acts there should be an effect clause in the definition of the conduct prohibited.
- ii) The tort of unlawful means conspiracy requires instrumentality: the unlawful act must be the direct cause of loss to the claimant rather than merely the occasion of such loss. This should be specified in the definition of persons unknown.
- iii) The evidential basis for the claim is focussed on the groups Insulate Britain and Just Stop Oil and should not be extended beyond these organisations.
- iv) There is no basis whatsoever, to extend the definition beyond environmental protest.

103. To establish any proper basis of claim, the definition of persons unknown should therefore read:

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 ENVIRONMENTAL PROTEST CAMPAIGNS ASSOCIATED WITH INSULATE BRITAIN AND JUST STOP OIL WITH THE INTENTION AND EFFECT OF THEREBY DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION.

Terms of Order: prohibitions

104. The Order states:

Definitions

1. In this Order:
 - 1.1. “Shell Petrol Station” means all Petrol Stations in England and Wales displaying Shell branding (including any retail unit forming a part of such a petrol station, whatever the branding of the retail unit).

...

Injunction

2. For the period until 4pm on [DATE], and subject to any further order of the Court, the Defendants must not do any of the acts listed in paragraph 3 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.
3. The acts referred to in paragraph 2 of this Order are:
 - 3.1. blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station or to a building within the Shell Petrol Station.
 - 3.2. causing damage to any part of a Shell Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;
 - 3.3. operating or disabling any switch or other device in or on a Shell Petrol Station so as to interrupt the supply of fuel from that Shell Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Shell Petrol Station.
 - 3.4. affixing or locking themselves, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station.
 - 3.5. erecting any structure in, on or against any part of a Shell Petrol Station.
 - 3.6. spraying, painting, pouring, depositing or writing in any substance on to any part of a Shell Petrol Station.
 - 3.7. encouraging or assisting any other person do any of the acts referred to in sub- paragraphs 3.1 to 3.7.
4. A Defendant who is ordered not to do something must not:
 - (A) do it himself/herself/themselves or in any other way.

- (B) do it by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

105. These are addressed in turn.

Shell Petrol Station

106. The term “Shell Petrol Station” is defined as any petrol station displaying Shell branding. There is no further guidance provided as to the scope of the land covered. It is not specified whether forecourts are included, or access roads or acilliary building within a larger retail space (which will often be shared by several other diverse retail outlets). It is notable that no maps or other guidance have ben provided setting out the georgraphical limits of the land affected by the order. This is significant since a number of terms prohibit actions “in”, “on” or “within” a Shell Petrol Station. Of particular concern is the potential for areas of public highway (whether access roads or footpaths) to be included within the land covered by any individual Shell Petrol Station.

107. The lack of clarity in the defintion of the land covered by “Shell Petrol Stations” means the injunction lacks the requisite clarity for an order which imposes severe penal santions for breach.

Intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.

108. The order states:

For the period until 4pm on [DATE], and subject to any further order of the Court, the Defendants must not do any of the acts listed in paragraph 3 of this Order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.

109. For the same reasons set out above in relation to the definition of persons unknown, the prohibited conduct should include both an effect clause and instrumentality in order that the prohibited conduct corresponds as closely as possible to the tortious basis for the order.

110. The prohibition should therefore read:

For the period until 4pm on [DATE], and subject to any further order of the Court, the Defendants must not do any of the acts listed in paragraph 3 of this Order in express or implied agreement with any other person, and with the intention and effect of disrupting

the sale or supply of fuel to or from a Shell Petrol Station by means of the acts in paragraph 3.

(3.1) Blocking or impeding access

111. This term imposes a blanket prohibition on protests which interfere with access to Shell Petrol Stations in any way. The prohibition is not limited to actions which take place on the land of the petrol station itself (such land is in any event is not defined). The prohibition therefore applies to protests on the public highway, which impact on access to a Shell Petrol Station. There is no geographical limit to the scope of action caught save that it must have an impact on a Shell Petrol Station.
112. As the UKSC confirmed in *Ziegler*, protests which intentionally disrupt the flow of traffic, even beyond a *de minimis* impact, nonetheless fall within the scope of Articles 10 and 11. A fact specific inquiry must be made in each case regarding the proportionality of restrictions on such protests. It is therefore impossible to state in advance whether such an obstructive protest will be unlawful. All will turn on fact-specific factors, including importantly: the importance of the issue, whether the protest targets the location affects, the degree of actual disruption caused, the availability of alternative routes and whether any public disorder arises.
113. The impact of protests which affect access to Shell Petrol Stations will vary widely depending on the circumstances and the duration of the protest. It cannot be said in advance that any demonstration that slows the flow of traffic onto a Shell Petrol Station will be unlawful.
114. As the above examples demonstrate, the Order appears to prohibit conduct which is not unlawful and is a clear exercise of Article 10 and 11 rights. There is no basis under which the order permits protests which have only a small impact on the flow of traffic. The Order prohibits all protests that interfere with the flow of traffic in any way. The effect of the order extends considerably beyond tortious conduct and the impact on Article 10 and 11 rights is therefore disproportionate.

(3.4) affixing any object or person

115. This would prohibit placing leaflets or signs on any objects on or in a Shell Petrol Station. Given the lack of clarity over the geographical scope of the land covered by any Shell Petrol Station this may include areas of the public highway. Affixing a sign to a public highway cannot be said in advance to be necessarily tortious even if it has the effect of impeding the sale of fuel at a Shell Petrol Station for a short period.

(3.5) erecting any structure in, on or against any part of a Shell Petrol Station

116. Similar concerns arise in relation to this term as with (3.4) above, particularly given the potential for the definition of Shell Petrol Station to include areas of the public highway.

(3.6) Painting or depositing or writing any substance on to any part of a Shell Petrol Station

117. This term would appear prohibit writing in chalk on the forecourt of a Shell Petrol Station. Whilst there is a requirement that this is done with an intention to disrupt the sale of fuel it is difficult to see how this could in fact arise. The net effect of the prohibition is therefore a chilling effect on anyone seeking to protest by writing on or near a Shell Petrol Station: acts which are not actionable by the Claimants and which it is inappropriate to threaten with the potential sanction of imprisonment for contempt.

(3.7)/(4) encouraging any other person to do any act prohibited

118. The term 'encouragement' is clearly vague. A person who displayed a banner in support of those protesting against Shell Oil would risk breaching the order. There is also a risk of a chilling effect on the expression of support for the aims of XR and those opposed to the fossil fuel use.

119. This term is a direct infringement of free speech and should therefore be viewed with particular scrutiny.

PROPORTIONALITY AND EXERCISE OF COURT'S DISCRETION

120. The Court is required to consider the effect of the injunction order as a whole. Taken cumulatively the scope of the order and range of conduct restrained renders the order wholly disproportionate. The Order clearly lacks “clear geographical and temporal limits” and fails to meet the *Canada Goose* requirements.
121. There are also concerns about the clarity of the proposed order. Such a lack of clarity brings with it a ‘chilling effect’ which may found a separate ground of challenge to the order.
122. Overall it is submitted that the terms of the order, and the related definitions of persons unknown are overly broad, too complex and unclear. The definition of persons unknown in the present injunction is so wide that it covers persons entirely unrelated to the previous protests against Shell Oil who have not previously protested in an unlawful manner and who do not threaten to do so. Nevertheless the present injunction prevents such persons from what would otherwise be entirely lawful conduct. The present injunction is therefore flawed in its approach to persons unknown.
123. The definitions of persons unknown and the prohibited conduct make reference to multiple cross-referring clauses, requirements for ‘express or implied agreement with others’ and disjunctive intention and effect clauses. The Order is simply too difficult to be reliably interpreted by a lay-person.

CONCLUSION

124. It is submitted that the present orders display many of the flaws identified in *Canada Goose*, as the Court of Appeal stated:

“...Canada Goose’s problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protestors. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protestors....” [at 93]

125. In seeking the to extend the Order the Claimant overlooks the role of the police in managing public order situations and protests. There are already ample police powers (including arrest for Aggravated Trespass and Public Nuisance) to address the limited number of more serious types of activity such as tunnelling which the Claimant has raised concerns over. There are also police powers to regulate unreasonable obstructions on the highway (including arrest for the offence of Obstruction of the Highway which now carries a potential prison sentence). The advantage of allowing such issues to be addressed by the police is that a factual assessment can be made on the ground as to the extent of disruption and the relevant competing rights and interests can be balanced, if necessary, on a minute-by-minute basis. Such an approach will inevitably produce a more tailored and proportionate balancing of rights than a court order which seeks to strike a balance in advance and in general terms across a wide range of factual circumstances. The limited instances of disruptive protest relied on by the Claimants therefore do not warrant the granting of an extensive and complicated order in the form sought.
126. The Interested Persons respectfully ask that the court discharge/vary the interim injunction in accordance with the submissions above.

Stephen Simblet KC
Owen Greenhall
Garden Court Chambers
23.04.23

IN THE HIGH COURT OF JUSTICE (QBD)

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”)

Between

(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

Defendant

and

MS JESSICA BRANCH

INTERESTED PERSONS

FURTHER NOTE ON BEHALF OF

**INTERESTED PERSON (MS JESSICA BRANCH) IN CONNECTION WITH BEING PERMITTED TO
BE HEARD**

1. The court has asked for further submissions on why it should allow Jessica Branch to address the court, either de bene esse or in consequence of CPR Rule 40.9.

2. Further evidence was invited from Jessica Branch and there are two statements, one from Ms Branch and one from Ms Friel, dealing with particular points about these proceedings.
3. Independent of that evidence, the starting point is:
 - (i) that the Claimants sought relief from the court without identifying any actual defendants at all (this being purely prospective, injunctive relief) and without identifying any named defendants. The remedies sought are against “Persons Unknown”. One year into this injunction, they know of no actual named defendants.
 - (ii) the injunction was limited in duration to one year. The court is being asked to renew injunctions that have (as per 82 (7) of Canada Goose and Ineos) been limited temporally.
4. Pursuing claims against “Persons Unknown” is recognised as being procedurally extraordinary or exceptional. Claimants have to bring claims against parties, not imagined parties, and academic claims are not entertained by the court save in exceptional circumstances: see e.g R v Secretary of State ex parte Salem. A claim for an injunction would normally involve the claimant setting out the allegations against the defendant, and the defendant having an opportunity to agree, or disagree, with the allegations made and relief claimed. The court will not allow the Claimant simply to name an entity that lacks legal personality: see EDO v Campaign to Smash EDO, cited in the existing skeleton argument. There are plenty of ways in which a claimant can bring a disparate group of individuals before the court. One is where a representative defendant is identified: there is well developed case- law going back over 100 years in relation to what is now contained in CPR Part 19.6. As to how this works in injunction with claims against protestors, see, inter alia, RWE Npower v Carroll [2007] EWHC 946.
5. Although the Claimants felt able to allege a common interest among those against whom they seek injunctions (which one might expect to be their position in a case where they allege a conspiracy), they have eschewed this procedural route. They have instead pursued a method of bringing defendants before the court which is of some controversy (hence recent inconsistent decisions as to the propriety of this from the Court of Appeal in Canada Goose and in Barking, and a judgment awaited from the Supreme Court.)

6. However that may be decided, there is no doubt that this is a procedurally unconventional way in which to proceed, and such cases involve the court granting considerable indulgences to a claimant. Instead of the court being placed in the position where it knows exactly who the parties are, and having arguments from all affected, the court was, and is, in the position of having only half the picture. It is for that reason that those who seek ex parte relief are under particular responsibilities to the court, and required to place before the court those arguments that would be placed before it were those against whom the claim is brought able to ventilate their position.
7. Perhaps for that reason, one additional consequence of the procedural choice made by a claimant who seeks remedies against persons unknown is that the Claimants are placed under a series of enhanced responsibilities procedurally, e.g. in relation to service and keeping the court updated: see Canada Goose, paragraph 82, which is cited and relied upon in this claim by the Claimants as well as Ms Branch. Some of paragraph 82 focuses on the duties in relation to service. The purpose of service is to bring the existence of the proceedings to the other parties' attention. There is no point bringing it to their attention if they are not then able to say or do something about it. Some of paragraph 82 is about there being a clear temporal limit to the injunction.
8. In relation to the Shell Petrol Stations injunction in particular, the opportunity for anyone affected to say or do something about it was, in this case, not afforded before the order was granted, and was not afforded at the return date. As the Note of the proceedings before Johnson J shows, two people attended and asked for an adjournment to make representations. That was refused. It is surprising that this was refused, for a number of reasons, including that, as Ms Friel attests, the judge himself announced that he had limited time.
9. Accordingly, the injunction was confirmed in circumstances where the judge declined to adjourn for contrary arguments to be made, was aware that there were contrary arguments and limited the time that he had to consider it. Further,
 - (i) as is said above, the judge limited the injunction to one year.
 - (ii) The injunction was subject to a provision that anyone could apply on 24 hours' notice to have it set aside.

10. As is agreed by all, no allegations are made directly against Ms Branch. Instead, she complains of the chilling effect that injunctions of this sort have on her ability to protest, or to encourage others to do so (and the terms of Johnson J's order, for example, prevents people from encouraging others to do the prohibited acts). She does not say that she has not known of the injunction for some time. But that is no reason to say that she should not be able to make submissions at the time that the court has decided, as the Court of Appeal has mandated it to do in Ineos and Canada Goose, that the injunction should come to an end unless renewed. Furthermore, it is easy to understand how someone might be prepared to live with rights of protest circumscribed for one year, but not for a further year, with potentially longer than that contemplated if, as was submitted by Ms Stacey on Tuesday 25th, the Claimants decide to name defendants and those defendants do actually seek to defend, file evidence etc, which she seemed to posit might require a period of up to, or beyond, one year. Ms Branch complains about the chilling effect. She is entitled to complain more deeply about what may turn out to be a deep freeze.
11. So, Ms Branch has done what the order posits. She has made representations, on 24 hours' notice as the order stipulates, to be heard at the time that the court has *already decided* that it should revisit these injunctions. The Claimants are confecting complaints about this. Essentially, one of the prices that they ought to be expected to pay for choosing to proceed in this unorthodox way is that those affected may want to ventilate their position.
12. It might further be pointed out that if, for instance, Ms Branch had made an application within the last couple of months that what the Claimants, and the court, would have done is expected that application to be dealt with at the time that they themselves were coming to court to seek their additional regranted injunctions. In fact, on one fair analysis, the way that Ms Branch has chosen to proceed, namely making representations to a court charged with considering whether injunctions should continue, is the most proportionate way of dealing with these matters. Courts are encouraged to have fewer, rather than more, hearings.
13. All that Ms Branch is seeking to do is to utilise a procedure under CPR Part 40.9 that in the most recent binding case from the Court of Appeal, namely Barking, says is central to the fair operation of persons unknown injunctions.

14. Her position, and approach, is the same as that deployed by those heard as interested persons under CPR Part 40.9 by Ritchie J in Eso v Breen [2022] EWHC 2600 (authorities, page 458). See especially paragraphs 8-10, 12 and 33-45. Of the “factors” identified by Ritchie J in paragraph 45, and as applied to Ms Branch’s position in this case, the submissions are these. Taking the factors in turn: (1) no; (2) no; (3) yes in some respects (4) no ; (5) yes; (6) Same low threshold; (7) Ms Branch faces the same cost risk and did not instigate this litigation; (8) the Claimants will not suffer prejudice. Ms Branch should be in no worse a position than those who addressed Ritchie J under CPR Part 40.9
15. It should also be pointed out that an order under CPR Part 40. 9 does not amount to joinder, and appears to be a temporary role in the proceedings. Ms Branch has *already* been affected by a “judgment or order” and she will be affected by any orders that the court might now make in relation both to extending or re- granting the injunctions sought and directions affecting the progress of the claim to trial. The court should hear her, and if CPR Part 40.9 is the formal way of providing her locus, then the court should permit that, and at this hearing.
16. This submission may also have a bearing on the nature of these particular proceedings, and whether the position is that the court is in some way bound by the approaches taken by Bennathan J and Johnson J. The Claimants’ submission that this is the case has some considerable difficulties. Those include:
- (i) The court does not actually know the reasons for Bennathan J’s decisions. There is no judgment. This problem also applies in relation to a submission that was made yesterday by Ms Stacey KC, who said that the Shell injunction proceedings were withdrawn in relation to the Kingsbury Oil Terminal due to a local authority injunction being obtained. It is true that a local authority injunction was obtained, and Ms Branch and others made representations in that case. A year later, and despite requests and complaints made to the court, Sweeting J has delivered no judgment in that case
 - (ii) The court does know that Johnson J made the order in the face of opposition from people who did not address the court and whom he ruled could not address him (or more accurately, have an adjournment for the purpose of addressing

him). Ms Friel's statement shows that this problem goes further: those who wished to oppose were not permitted to do so, and the judge gave the case less than two hours' consideration instead of the longer time expected;

- (iii) Since the Claimants proceeded ONLY against "persons unknown", there is no properly identified defendant that has had the opportunity to be heard, so no inferences of fact and law that can be drawn from their non-attendance or non-submission. The position is different from the position in TFL v Lee, where in addition to Lee, there were 62 other named defendants;
- (iv) The practice that courts adopt in treating matters as resolved or binding applies only between those who are or were parties to the litigation. Although this is not issue estoppel as such, this thinking is based on the contention that it is an abuse of process for those who were before the court to go behind the court's ruling on the point.

17. The court's task is to consider whether injunctions which were made a year ago and limited to a year should be re-imposed. This is no sort of rubber-stamping exercise. The courts that considered the injunctions previously imposed a temporal element of a year. Re-grant is not automatic, otherwise there is no effective temporal limit on these draconian orders.

STEPHEN SIMBLET KC

25 April 2023

Claim No: QB-2022-001241 (“Haven Claim”)

Claim No: QB-2022-001259 (“Tower Claim”)

Claim No: QB-2022-001420 (“Petrol Stations Claim”)

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 AND ORS

[more fully described in the Relevant Claim Form]

Defendants

CLAIMANTS’ SKELETON ARGUMENT

Hearing: 17-18 April 2024 (1.5 days)

References in this Skeleton Argument:

- *e.g. “[C/50]” are references to tabs/page numbers in the Core Bundle.*
- *E.g. “[SB/50]” are references to tabs/page numbers in the Supplemental Bundle.*
- *e.g. “[AB/1/2]” are references to the tabs/ page numbers of the Authorities Bundle.*

Suggested Pre-Reading: (Time Estimate: 3 hours) -

- Judgment of Hill J in *Shell UK v PU* [2023] EWHC 1229 (the “*Hill Judgment*”) [AB/1]
- Application Notice dated 12 February 2024 [C/15/1078]
- Order of Soole J dated 15 March 2023 [C/1/14] (“the Soole J Order”)
- Shell Petrol Stations Claim Draft Order [SB/1/4]

- Second Witness Statement of Christopher Prichard-Gamble (“**Prichard-Gamble 2**”) [AB/6/227]
- Overall Chronology CPG2 [C/256]
- Fourth Witness Statement of Benjamin Austin (Petrol Stations) (“**Austin 4**”) [C/50]
- Eighth Witness Statement of Alison Oldfield (“**Oldfield 8**”) [SB/10/68]
- Order of Hill J dated 23 May 2023 (Petrol Stations Claim) [C/1042]
- Application Notices for Variation of Alternative Service Provisions dated 11 April 2024 [SB/4-8]

A. INTRODUCTION

1. This is the Claimants’ skeleton argument in relation to the continuation of the orders of Hill J dated 23 May 2023 (“**the Hill J Orders**”) [C/1020; 1031; 1042] granted in respect of the three claims identified above (“**the Claims**”) and the Claimants’ application dated 12 February 2024 (the “**Directions Application**”). On 15 March 2024, the Court acceded to the application to add defendants to the QB-2022-001420 proceedings, the Petrol Stations Claim. The Claimants now seek a continuation of the Hill J Orders pending trial with a backstop of 12 November 2024 and propose directions for trial in respect of all the proceedings.
2. The First and Second Claimants are, respectively, the freehold owners of (i) the Shell Haven Oil Refinery (“**Haven**”), a substantial fuel storage and distribution installation; and (ii) the Shell Centre Tower (“**Tower**”), a large office building. The Third Claimant is Shell UK Oil Products Limited. It markets and sells fuels to retail customers in England and Wales through a network of Shell-branded petrol stations, and in some cases has an interest in the land where the Shell petrol station is located (“**Shell Petrol Stations**”).
3. References to “**Shell**” in this Skeleton Argument should be read as a reference to the relevant Claimant(s).
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 Claims have been managed together (though not consolidated) and are for interim and final injunctions to restrain unlawful protests by activists. There have been a number

of interim injunctions granted in these proceedings following applications in the Claims, most recently by the Hill J Orders.

6. Interim injunctions were granted against Persons Unknown restraining unlawful protests at Haven and Tower on 5 May 2022 (Bennathan J). An interim injunction was granted on 5 May 2022 (McGowan J) further interim injunction was granted on 20 May 2022 in the Petrol Stations Claim against Persons Unknown restraining unlawful protests by Persons Unknown at Shell petrol stations (Johnson J) (“**the Original Orders**”).
7. The background is set out in the judgment of Johnson J in *Shell UK v PU* [2022] EWHC 1215 (the “*Johnson Judgment*”) at [10] – [19] [AB/5/138-140] and in the *Hill Judgment* at [10] – [21] [AB/1/6/-8].
8. The threat which provoked the Claims in April / May 2022 and the applications for the interim injunctions was disruptive protest under the banners of Just Stop Oil, Youth Climate Swarm Movement, Extinction Rebellion and Scientist Rebellion which are associated with, and have grown out of, other climate protest movements (“**the Protest Groups**”). Johnson J described the groups at [9]) [AB/4/138]:

“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”.
9. The Orders do not to stop protestors from undertaking peaceful protests whether near the Sites or otherwise. The Claimants’ concern has been to enforce its property rights and mitigate health and safety and other risks posed by unlawful activities which prompted the injunctive relief. The Hill J Orders have been carefully drawn and only prohibit activity which is clearly unlawful. For example, in relation to Haven and Tower, the Hill J Orders prohibit acts constituting trespass, private nuisance and damage to private land. In relation to the Petrol Stations, the Order does not seek to prohibit protestors from entering the Petrol Stations but simply seeks to control what they do within the Petrol Stations by prohibiting a campaign of protests which is intended to harm the Claimant economically and raises significant health and safety concerns: see Prichard-Gamble 2 at §2.3.

10. The Original Orders were continued by order of Hill J dated 23 May 2023 until 12 May 2024. In this hearing, the Claimants seek:
- a. a continuation of the Hill J Orders pending trial with a backstop of 12 November 2024;
 - b. directions for trial;
 - c. orders for alternative service, including variations to the existing alternative service provisions pursuant to separate applications for variation to such provisions.

B. SERVICE

11. All documents in these proceedings (including the application notices¹, evidence and the Soole J Order) have been served on the relevant parties (including non-parties) as provided for in the alternative service provisions of the Hill J Orders and most recently the Soole J Order: see section 2 of Oldfield 8 [SB/10/68].
12. The same process has been adopted to serve relevant parties with notification of this hearing and this skeleton argument.

C. CONTINUATION OF THE HILL J ORDERS

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

(i) The Original Threat

14. The factual allegations and the basis on which the original Petrol Stations Claim Order was sought, as they stood on 13 May 2022, are fully set out in the *Johnson Judgment* at [10] – [17] [AB/4].
15. In respect of the original Tower Claim Order and Haven Claim Order, the basis of Shell’s view that there was a real and imminent risk of unlawful activity directed at the Claimants and the wider Shell group of companies is fully set out in:

¹ The application notice dated 12 February 2024 was served as explained in AJO5 [C/20/1488].

- a. Brown 1 [C/67/5762] and Brown 2 [C/53/5145] made in respect of the Shell Haven Proceedings; and
- b. Garwood 1 [C/65/5669] and Garwood 2 [C/55/5182] made in respect of the Shell Centre Tower Proceedings.

16. Essentially:

- a. Autumn 2021 - a number of protests took place, which involved the blocking of major roads in the UK, including the M25, including by activists gluing themselves to roads, immovable objects, or each other. This resulted in National Highways being granted a number of injunctions, which were breached many times and committal proceedings followed.
- b. Spring 2022 - protests involving similar tactics re-commenced, but directed at the fossil fuel industry rather than the road network, including at assets owned by the Shell Group.
- c. In April/May 2022, individuals connected with these groups undertook various activities with the apparent aim of causing maximum disruption to Shell's lawful activities and thereby generate publicity for their protest movement. In May 2022, they promised that such activities would continue *"until the government makes a statement that it will end new oil and gas projects in the UK."*

(ii) **The May 2023 Threat**

17. The factual allegations and the basis on which the Hill J Orders were sought is fully set out in the *Hill Judgment* [AB/1]:

- a. in respect of Haven, the evidence showed a significant number of incidents in relation to oil refinery sites between August 2022 and February 2023: at [30];
- b. in respect of Tower, the evidence suggested that Bennathan J's injunction had had a deterrent effect. However, it continued to be a prime location for protests and corporate buildings more broadly had been the target of unlawful activity since the injunction was made: at [31];
- c. in respect of Petrol Stations:

- i. there had been two incidents affecting ten petrol stations during the relevant period in which fuel pumps were vandalised, customers' access to the forecourt was blocked and on the first of these dates protestors super glued themselves to the forecourt; and
- ii. the evidence described a significant number of incidents of direct-action protest against the wider Shell business and the wider oil and gas industry and operators within it: at [32] – [34].

18. Even though, at the time of the hearing, there did not appear to have been any direct unlawful action at Haven or Tower, Hill J found that the 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 Shell and other companies in the oil/gas industry were sufficient evidence of a continued threat that justified the continuation of the injunctions.

(iii) Continued Threat

19. The basis of Shell's view that there continues to be a real and imminent risk of serious harm is set out in Prichard-Gamble 2 at §§2.4-2.5 [C/6/230], namely that since the grant of the original Orders, the Claimants, the wider Shell business and the wider oil and gas industry and operators have continued to be key targets for direct action, some of which is unlawful. In addition, the Defendants have failed to provide assurances that they will no longer target the Claimants by engaging in unlawful activity such that there remains a real risk that without the protection of the injunctions, protest activity would very likely return to the levels of unlawful activity previously experienced: see also Prichard-Gamble 2 at §4.3 [C/6/234-235]. This is consistent with the clear indication that the Protest Groups plan to continue their campaigns and direct action for the foreseeable future: see paragraph 23 below.

20. Overall, as Linden J put it in *Esso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB) at [67] [AB/7/182]:

“it appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course, not invariably so. If, therefore, an injunction

is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume.”

21. The Claimants have prepared a chronology detailing the incidents which they have been able to identify of instances since the Hill J Orders were granted of direct-action protest against the Claimants, the wider Shell business and the wider oil/gas industry and operators within it (including organisations connection to the use of (and funding towards the use of) fossil fuels generally). As Prichard-Gamble 2 sets out at §§4.2 – 4.10 [C/6/234-243], those chronologies show:

- a. there have been at least three instances (on 12 June 2023, 15 June 2023 and on 19 June 2023) where protestors accessed the entrances to Tower and, on one of these occasions (15 June 2023) protestors also attempted to gain access to the remainder of the building;
- b. save for these incidents, there have not been any other incidents of unlawful breach of the Hill J Orders at any of the locations covered by the current injunctions; however:
 - i. protests have regularly occurred outside the Claimants’ premises, most often Shell Centre Tower (63 separate incidents), with significant numbers of protestors being present; and
 - ii. protest activity – unlawful and lawful - targeting the wider oil and gas industry and the use of fossil fuels generally continues unabated and is far from reaching a conclusion.

22. In addition to these incidents, over the course of 2023, protestors also appear to have turned some of their attention to large scale sporting and other high-profile events. Prichard-Gamble 2 sets these out at §5.1 - the nature of the incidents and the extremity (in some cases) of the lengths protestors are willing to go to is further evidence that some individuals remain willing to carry out unlawful activity in order to advance their campaign.

23. Finally, it is notable that very recently, on 3 March 2024, Just Stop Oil released a press statement outlining their plans for 2024 confirming that nonviolent civil resistance will continue stating (Prichard-Gamble 2 at §7.3.6 [C/6/247-248]):

“nonviolent civil resistance to a harmful state will continue, with coordinated, radical actions that reach out to new people and capture the attention of the world...Just Stop

Oil will continue to be the major focus until we win, but we have a new three part demand: No New Oil, Revoke Tory Licences and Just Stop Oil by 2030. In addition to disrupting high-profile cultural events and continuing our Stop Tory Oil campaign, focussing on MP's and those in power, this summer Just Stop Oil will commence a campaign of high-level actions at sites of key importance to the fossil fuel industry – airports" [emphasis added].

(iv) **Harm**

24. 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 the *Johnson Judgment* at [18] – [19] [AB/5/140]. In summary:

- a. the Shell Haven and the Shell Petrol Stations store significant quantities of highly 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 Shell's sites, Shell has 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, Shell's staff and/or the public which would be incapable of *ex post facto* remedy: Prichard-Gamble 1 at §6.10 [C/39/3084]; see also Prichard-Gamble 2 at §3.10 [C/6/233];
- 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: Prichard-Gamble 2 at §§3.3-3.5 [C/6/231]; *Hill Judgment* at [17];
- c. Claimants and others have suffered loss and damage by reason of the Protest Groups' activities.

25. In terms of risk of future harm, Hill J accepted Shell's evidence that (*Hill Judgment* at [39] [AB/1/12]):

"(i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them."

26. 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: Prichard-Gamble 2 at §§6.1-6.3 [C/6/246]; see also *Johnson Judgment* at [34] [AB/5/145] and *Hill Judgment* at [134] – [136] [AB/1/28]. The evidence of events that have taken place since the granting of the Hill J Orders provides clear grounds for continuing the injunctions.

(v) **Other injunctions granted against environmental protestors.**

27. The Courts have granted a number of interim and final injunctions against environmental protestors prohibiting direct action. These include, most recently²:

- a. 26 January 2024: a final injunction granted by Ritchie J in *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB).
- b. 6 October 2023: a final injunction granted by Mr Simon Gleeson in *UK Oil Pipelines Ltd v Persons Unknown* (unreported).
- c. 18 July 2023: a final injunction granted by Linden J in *Esso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB).
- d. 14 July 2023: an interim injunction granted by Sweeting J in *North Warwickshire BC v Persons Unknown* [2023] EWHC 1719 (KB). The Judge found that the test in s.12(3) HRA 1998 was satisfied – i.e. the claimant was “likely” to obtain an injunction at trial.
- e. 23 May 2023: a final injunction granted against Just Stop Oil in *Transport for London v Lee* [2023] EWHC 1201 (KB) (Eyre J).
- f. 11 May 2023: an interim injunction granted to Essar – case unreported.
- g. 3 May 2023: a final injunction granted against Insulate Britain in *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB) (Morris J).

see also Prichard-Gamble 2 at §7.4 [C/6/247].

(vi) **Approach of the Court in review hearings**

² These are not included in the authorities bundles but copies will be available in court in case they need to be referred to.

28. Where the hearing of a review is a contested hearing, what takes place is in the form of a “*complete rehearing of the matter, with each party being at liberty to put in evidence.*” “*The matter*” in this context, necessarily includes consideration of the judgments of the previous judges: **Hill Judgment** at [101] and [111] [AB/1/21-22].

29. It is assumed that the present review will proceed on the same basis. Having consideration to the judgments of the previous judgments, the question is whether the evidence of events that have taken place since 23 May 2023 “provides grounds for declining to extend the injunctions on materially identical terms”: per Cavanagh J in **Tfl v Lee** [2023] EWHC 402 (KB) at [20] [AB/6/162].

(vii) **Wolverhampton**

30. It is relevant to draw the attention of the Court to the recent Supreme Court judgment in **Wolverhampton CC v London Gypsies and Travellers** [2024] 2 WLR 45 [AB/8] which has been decided since the grant of the Hill J Orders. It is the Claimants’ case, that **Wolverhampton** has not materially affected the test to be applied when granting an interim injunction in the context of protests against persons unknown (including newcomers).

31. The case involved traveller injunctions which are different to protestor cases because local authorities have duties in relation to travellers. The Supreme Court, in rejecting the appeal, held that injunctions can be granted against persons unknown who are “newcomers”: at [167] [AB/8/237]. The Supreme Court expressly stated that “*nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protestors who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2’s land with the intention of disrupting construction*”: at [235] [AB/8/252].

32. Following the ruling of the Supreme Court³, the seven **Canada Goose** guidelines remain good law, and other factors have been added: see e.g. **Valero** at [57] – [58] [AB/9/284-286]. Those factors are materially the same as those laid down in the protest cases of **Ineos v Persons Unknown** [2019] 4 WLR 100 at [34], and then developed in **Canada Goose v Persons Unknown** [2020] 1 WLR 2802 at [82] [AB/3/79].

33. In respect of protest cases, the Supreme Court made it clear that (at [236]) [AB/8/253]:

³ See in particular at [167], and then expanded upon at [188]-[189] and [218]-[232].

“Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant’s rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained” [emphasis added].

34. The Claimants seek to follow the approach of the Supreme Court and it is accepted that:

- a. there must be a compelling need for a protest injunction against newcomers: at [236] [AB/8/253]; and
- b. a full duty of disclosure applies to claimants seeking a protest injunction against newcomers: at [219] [AB/8/249].

(viii) **Relevant Factors**

35. Shell has been notified by one of the Named Defendants (Laurie) that he will be attending the hearing and intends to oppose the renewal. It is anticipated that others may also attend.

36. In the previous review hearing (“**the 2023 Review Hearing**”) (which was also contested, with Leading Counsel representing an interested party), Hill J adopted the list of issues identified in the *Johnson Judgment* as the framework for her analysis. The same factors apply here.

37. Taking each of these in turn with reference to the *Hill Judgment* (albeit adapted to reflect the language of factors said to be applicable by the Supreme Court in *Wolverhampton* (see list of 13 factors in *Valero* at [62] – [78]) [[AB/8/287-291]]).

(A) Substantive Requirements:

(1) Cause of Action / Is there a serious question to be tried, applying the test set out in *American Cyanamid v Ethicon* [1975] AC 396 per Lord Diplock at 407G?

38. The Court is invited to adopt the judge’s reasoning and conclusions at [115] and [131] – [132]. The position remains the same - there is a serious issue to be tried in the Claims.

(2) Damages not an adequate remedy: would damages be an inadequate remedy for the Claimants and would a cross-undertaking in damages adequately protect the Defendants?

39. The Court is invited to adopt the judge’s reasoning and conclusions [137] and [140]. Given the sorts of sums involved and practicality of obtaining damages, the latter would not be an adequate remedy. There remains no evidence that the Defendants have the

financial means to satisfy an award of damages. More importantly, the health and safety risks, if triggered, could cause serious and/or fatal injuries for which damages would not be adequate. The Petrol Stations Claim involves economic torts and no evidence has been put forward of the Defendants' finances or ability to satisfy any damages. Conversely, Shell has offered a cross-undertaking in damages (see e.g. First Schedule to Petrol Stations Claim draft Order [SB/1/4]) in case this becomes necessary and has the means to satisfy any such order, which would be an adequate remedy for the Defendants (see *Wolverhampton* at [234]).

(3) Is there a compelling justification (*Wolverhampton* at [188]) / Does the balance of convenience otherwise lie in favour of the grant of the order: *American Cyanamid* per Lord Diplock at 408C-F /?

40. As damages are not an adequate remedy and the cross-undertaking is adequate protection for the Defendants, it is not necessary separately to consider the balance of convenience: see *Johnson Judgment* at [38] [AB/5/146]. In any event, the Court is invited to adopt the Hill J's reasoning and conclusion - the balance of convenience is in favour of continuing the relief: at [144] [AB/1/29]. There are compelling reasons to protect the Claimants' Sites and others from the risk of harm which is sought to be protected by the Orders.

(4) Sufficient evidence to prove the claim / Is there a sufficiently real and imminent risk of damage so as to justify the grant of what is a precautionary injunction?

41. It is only appropriate to grant an interim injunction if there is a sufficiently "real" and "imminent" risk of a tort being committed to justify precautionary relief (see, for example, *Canada Goose UK Retail Limited v Persons Unknown* [2020] EWCA Civ 303; [2020] 1 WLR 2802 at [82(3)]) [AB/3/79].

42. The evidence before the Court shows the position remains the same as that assessed by Hill J in April 2023 (at [147]) [AB/1/29]:

"unless restrained by injunctions the Defendants will continue to act in breach of the Claimants' rights; that there continues to be a real and imminent risk of future harm; and that the harm which might eventuate is sufficiently "grave and irreparable" that damages would not be an adequate remedy: see *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch)] at [31(4)(d)], per Marcus Smith J at [31(3)((d))."

43. It is relevant that on each of the occasions that the Claims have come before the Court in these proceedings, the judges have found that the Claimants were likely to succeed

at trial on the basis of the evidence before them. It is also relevant that in recent cases (see paragraph 27 above) brought by those in the energy sector the Courts have accepted that there continues to be a sufficiently real and imminent risk of direct action to justify maintaining the injunctive relief. The Claimants invite the Court to adopt the assessment of Ritchie J in *Valero* (para 26(a) above) at [64] [AB/9/287]:

“I find that the reduction or abolition of direct tortious activity against the Claimants’ 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence”.

44. The observation of Linden J in *Esso Petroleum* (para 26(c) above) is also relevant here, namely that it would have been very easy for Protest Groups to give assurances or evidence to the Court that there was no intention to carry out direct action at the Sites but that they did not do so [67] [AB/7/182].

(5) Full and Frank Disclosure (*Wolverhampton* at [219])

45. As demonstrated by their evidence, the Claimants and their legal team have evidenced full and frank disclosure.

(B) Procedural requirements

(6) Scope of the Order: do the prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting the Claimant’s rights: *Canada Goose* at [78] and [82(5)]; *Wolverhampton* at [223]?

46. The Court is being asked to continue the Hill J Orders on materially identical terms. In these circumstances, it is invited to adopt the reasoning and conclusions of the judge at [150] – [153].

47. As to any concern around whether the drafting properly reflected the elements of the tort of conspiracy to injure (the Petrol Stations Claim), this issue was dealt with at the 2023 Review Hearing. Hill J found the acts prohibited in the Petrol Stations Order hey mirror the torts underlying the overarching tort of conspiracy to injure and necessarily amount to conduct that constitutes the tort of conspiracy to injure, when the injunction is read as a whole (at [151]). She determined the language in the Petrol Stations Order was appropriate: at [152] [AB/1/30]. The language in the present draft is the same.

(7) Are the terms of the injunctions sufficiently clear and precise: *Canada Goose* at [82(6)]; and *Wolverhampton* at [222]?

48. Hill J accepted that the terms of the Orders were sufficiently clear and precise (at [154] – [156]) [AB/1/31]. The Court is being asked to continue the Hill J Orders on materially identical terms.

(8) Do the injunctions have clear geographical and temporal limits: *Canada Goose* at [82(7)]; *Wolverhampton* at [167(iv)] and [225]?

49. As to the geographical limits,

- a. the extent of the Haven and Tower injunctions is made clear by the plans appended to them;
- b. in respect of the Petrol Stations injunction, the geographical area was revised before Hill J to more clearly delineate where the scope of the injunction ends and the public highway over which the injunction does not apply begins [AB/1/31]. The Court is being asked to continue the Order on the same terms and is invited to adopt the reasoning and conclusion of Hill J at [159]. The injunction applies to those “*directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt to a building within the Shell petrol station*” and Hill J found that that wording renders the Petrol Stations Order sufficiently geographically specific as it makes it clear that the area of focus is the petrol station forecourts.

50. As to temporal limits, Shell seeks a short extension to each injunction until the date of final hearing, with a backstop of 23:59 on 12 November 2024: see draft Order at [4] [SB/1/4]. The proposed backstop is subject to the Court being able to accommodate the hearing by 12 November 2024.

51. As is clear from the Directions Application, throughout these proceedings, the Claimants have been mindful of their obligations to progress the litigation and seek to do the same via this hearing. The period sought in the draft order strikes the right balance between the need to progress the litigation whilst allowing the Defendants a reasonable period within which to prepare any defence they wish to file. Further, it reflects the need to protect Shell from the real threat that the Defendants will engage in unlawful protest activity at the Sites during the interim period between expiry of the Hill J Orders and the conclusion of the final trial.

(9) The Defendants having not been identified, are they in principle, capable of being identified and served with the orders: *Canada Goose* at [82(1)] and [82(4)]; *Wolverhampton* at [221]?

52. The Claimants have taken active steps to identify persons falling within the Persons Unknown description and indeed there are now 15 Named Defendants who have been joined to the Petrol Stations Claim. Those persons were added to the proceedings as set out in the Soole J Order at [1], on the basis of the evidence contained in Oldfield 4 [C/22/1639] which was considered at the last hearing and which addressed all identifiable Defendants to date in respect of that Claim.

53. In line with its duty to the Court, in the event that final Orders are made the Claimants will undertake to join any other persons identified as falling within the Persons Unknown description to the three orders as soon as reasonably practicable, following the provision of their names and addresses by the police. The position remains as found by the judge at [169]:

“when people take part in protests at the relevant sites, they are, in principle, capable of being identified and that there is a process in place focussed on achieving that. Such persons can then be personally served with court documents. In the meantime, effective alternative service on the Persons Unknown Defendants can take place in a manner that can reasonably be expected to bring the proceedings to their attention [as explained below].”

(10) Are the Defendants identified in the claim forms and the injunctions by reference to their conduct: *Canada Goose* at [82(2)]; *Wolverhampton* at [221]?

54. The Court is invited to adopt the reasoning and conclusions of Hill J at [170] that the descriptions of the Persons Unknown are sufficiently precise to identify the relevant Defendants in circumstances where the descriptions target their conduct.

(11) Are the interferences with the Defendants’ rights of free assembly and expression necessary for and proportionate to the need to protect the Claimants’ rights: Articles 10(2) and 11(2), read with the HRA, section 6(1)?

55. All three injunctions interfere with the Defendants’ rights under Articles 10(1) and 11(1). However, such interferences can be justified where they are necessary and proportionate to the need to protect the Claimants’ rights. As Lord Sales JSC explained in *DPP v Ziegler* [2022] AC 408 at [125] [AB/4/126] the test is as follows:

“...the interference must be “necessary in a democratic society” in pursuance of a specified legitimate aim, and this means that it must be proportionate to that aim. The four-stage test of proportionality applies: (i) Is the aim sufficiently important to justify interference with a fundamental right? (ii) Is there a rational connection between the means chosen and the aim in view? (iii) Was there a less intrusive measure which could have been used without compromising the achievement of that aim? (iv) Has a fair

balance been struck between the rights of the individual and the general interest of the community, including the rights of others?”.

56. Shell does not propose to rehearse the submissions in respect of this factor that were argued in the contested hearing before Hill J. The Court is invited to adopt Hill J’s reasoning and conclusions at [179] – [180] [**AB/1/35**]:

- a. *“the injunctions strike a fair balance between the Defendants’ rights to assembly and expression and the Claimants’ rights: they protect the Claimants’ rights insofar as is necessary to do so but not further;*
- b. *“the interferences with the Defendants’ rights of free assembly and expression caused by the injunctions are necessary for and proportionate to the need to protect the Claimants’ rights.”*

(12) Have all practical steps been taken to notify the Defendants: the Human Rights Act 1998, section 12(2) / Compliance with requirement to ‘advertise’ the application in advance and give effective notice (*Wolverhampton* at [226]-[227])?

57. Section 12(1) – (2) of the HRA 1998 provides as follows:

“(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied— (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified”.

58. Oldfield 8 sets out the extensive steps the Claimants have taken to effect service of the Soole J Order and various documents in these proceedings on the relevant persons [**SB/10/68**]. Oldfield 9 will set out the steps taken to notify the Defendants of this hearing. Consequently, the Claimants have complied with the service requirements and with s.12(2) in respect of all Defendants.

(13) If the order restrains “publication”, is the Claimant likely to establish at trial that publication should not be allowed: the HRA, section 12(3)?

59. The HRA, section 12(3) provides as follows:

“No such relief [ie. that defined by section 12(1) at [181] above] is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed”.

60. The arguments on both sides of this issue were fully ventilated in the hearing before Hill J ([184] – [195]) [**AB/1/36**] and Johnson J also addressed this issue in detail in his judgment [**AB/5/151**]. For present purposes, the Claimants do not challenge Hill J’s

finding at [196] that the injunctions do involve some elements of publication for these purposes and that section 12(3) applies (although it should be noted that Johnson J took the opposite view).

61. On that basis, the test is whether the Claimants are “likely” to succeed at a final trial, at least in relation to the “writing” aspects of the injunctions. The Court is invited to adopt Hill J’s conclusion that the test is met: at [198] [AB/1/39]; see also *Johnson Judgment* at [76] [AB/5/153] and [32] [AB/5/145].

(ix) Conclusion

62. For the reasons set out above, it is submitted that it is appropriate to extend the injunctions in the manner sought by the Claimants.

D. ALTERNATIVE SERVICE PROVISIONS AND PROPOSED VARIATIONS

63. The alternative methods of service which have already been endorsed by the Court in relation to Persons Unknown remain applicable and the Court is invited to expressly continue such methods, subject to the variations requested below.

64. Those variations are sought in circumstances where:

- a. Shell has identified that certain addresses are no longer addresses at which some of the Named Defendants and a non-party now reside; and
- b. practical difficulties have also come to light in relation to the requirement to serve copies of documents by email, given the file size of relevant attachments.

65. Applications have therefore been made to vary the alternative service provisions, so far as they relate to the relevant Claims as set out in the recent application notices and Oldfield 8 [SB/10/68].

Variations to alternative service for Named Defendants

66. The proposed variations in relation to alternative service on Named Defendants are (Oldfield 8 at §3.5) [SB/10/76]:

- a. variations to the first limb of paragraph 7 (7.1) of the Soole J Order (which requires the documents to be sent to each of the email addresses listed at Schedule 2 of the Order dated 15th March 2024), by sending an email to such email addresses and providing a link to the documents on the Data Site, rather than sending/attaching copies of the documents themselves to emails sent.

- b. for four of the Named Defendants (McKechnie, Burns, Harris and Goode), to permit service by the same method which is already set out in the Soole J Order at [8] in respect of the Fifteenth Defendant (Samuel Holland) (i.e. by serving them in the same manner as persons Unknown as permitted by paragraphs 7.1 and 7.2 of the Soole J Order). That is sought in circumstances where Shell has now discovered that the last known address supplied by the police for those additional Named Defendants is not the address at which those Named Defendants now reside;
- c. for two of those Named Defendants (McKechnie and Goode) and to the extent it is reasonably possible, service of future documents may also be effected by sending messages to the social media accounts which Shell has obtained, by sending them a link to the www.noticespublic.com (**“Data Site”**), instead of service on the postal addresses previously used) (i.e. by serving them in the same manner as Harris and Burns as permitted by paragraphs 7.4 and 7.5 of the Soole J Order); and
- d. to permit the sending of an email and a link to the documents on the Data Site to Named Defendants who have provided / provide an email address for service, rather than sending/attaching copies of the documents themselves to emails sent.

67. Shell also seeks an order that the steps already taken to effect service as set out in AJO8 on those Named Defendants shall be good service: Oldfield 8 at §3.5.1 [**SB/10/76**].

Variations to alternative service for Persons Unknown

68. The proposed variations in relation to alternative service on Persons Unknown are (Oldfield 8 at §4.4 §4.6; §4.19 – §4.25 [**SB/10/78, 84—86**].

- a. variations to the second limb of paragraph 22 (22.2) of the Soole J Order (which requires the documents to be sent to each of the email addresses listed at Schedule 2 of the Order dated 15th March 2024), by sending an email to such email addresses and providing a link to the documents on the Data Site, rather

than sending / attaching copies of the documents themselves to emails sent: Oldfield 8 at §4.1-4.6 [SB/10/77-78];

- b. variations to the third limb of paragraph 22 (22.3) of the Soole J Order (which requires documents to be sent to any person who has previously requested a copy) so as to permit the sending of a letter and a link to the documents on the Data Site to their last known address or sending an email to their email address and a link to the documents on the Data Site or sending an email/letter to their retained solicitors and a link to the documents on the Data Site. That is sought in circumstances where Shell has now discovered that the address held for one of those non-parties (Jessica Branch) is not at the address at which she now resides and that documents sent to that address may not come to her attention: Oldfield 8 at §4.21 [SB/10/85].

69. Shell also seeks an order that the steps already taken to effect service on Persons Unknown as set out in AJO8 shall be good service.

70. It is submitted that the circumstances set out above and in AJO8 amount to a ‘good reason’ for the Court to permit the variations to the existing alternative service provisions: CPR r. 6.15(1).

E. DIRECTIONS

63. Shell respectfully invites the Court to give directions with a view to listing the matters for a final hearing before the proposed backstop date of 12 November 2024.

71. The Court is invited to consider the proposed directions in the draft Order [SB/1/4] the key provisions of which are summarised (with dates) below:

- a. Para 14 (Defence) = **15 May 2024**
- b. Para 15 (Replies) = **19 June 2024**
- c. Para 16 (C’s witness evidence) = **3 July 2024**
- d. Para 17 (D’s witness evidence) = **24 July 2024**

- e. Listing of the final hearing in respect of all three Claims for a final hearing on first available date after **24 July 2024** with a time estimate of 2.5 days⁴ - such listing must take into account the fact that Shell will need approximately 4 weeks to comply with the alternative service provisions at the Petrol Stations - i.e. the need to put up the relevant warning notices – prior to the expiry of any existing injunction.
- f. Paras 16 – 19: Provision for alternative service of the relevant Order in the same manner as previously orders subject to the variations requested and explained above (paras 63).
- g. Para 20: Provision for any person affected to apply to be heard (as per Hill J's Order at para 16) [C/9/1046].

64. CONCLUSION

72. For the reasons set out above, Shell invites the Court to grant the Orders sought and make the directions in accordance with the draft Order, or such other directions as the Court thinks fit.

MYRIAM STACEY K.C.

JOEL SEMAKULA

LANDMARK CHAMBERS

12 April 2024

⁴ It is these directions that have informed the backstop date of 12 November 2024.

Claim No: QB-2022-001241 (“Haven Claim”)

Claim No: QB-2022-001259 (“Tower Claim”)

Claim No: QB-2022-001420 (“Petrol Stations Claim”)

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 AND ORS

[more fully described in the Relevant Claim Form]

Defendants

CLAIMANTS’ SKELETON ARGUMENT

Claimant: Shell UK Ltd, Shell International
Petroleum Company Ltd, Shell UK Oil Products
Ltd
Name of Witness : Nancy Friel
Statement No : 1
Exhibits :
Date : 26 April 2023

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

Defendants

STATEMENT OF NANCY FRIEL

I, Nancy Friel

WILL SAY AS

FOLLOWS:-

1. I make this statement in support of my challenge to the Claimants' applications to extend three injunctions.

2. The statements I make are from my own knowledge or belief unless otherwise stated. If not from my own knowledge I will identify the source. My solicitor drafted this statement having spoken to me on the phone and then emailed it to me for signature.
3. I make this statement in relation to my appearance at the review hearing of the Shell Petrol Stations injunction before Mr Justice Johnson on 13 May 2022.
4. I am an environmental activist. I regularly participate in demonstrations organised by Extinction Rebellion (XR) in relation to the climate change emergency (CCE).
5. I became aware of the Shell Petrol Stations injunction in April 2022. It concerned me because of its breadth and because I consider that petrol stations are a good location to carry out a protest in relation to the use of fossil fuels, in order to bring their contribution to the CCE to the attention of people using the petrol stations, in the hope that that may persuade them to reconsider their use of fossil fuels in the future. I was concerned that the injunction would make it too risky to participate in such protests.
6. I spoke to my solicitors, Hodge Jones and Allen, about this injunction. They informed me that they did not have capacity to represent me at the return hearing on 13 May 2022 but offered dates when they and counsel would be able to do so. Accordingly I attended the hearing unrepresented and requested an adjournment in order to bring the challenge with legal representation, giving alternative dates on which my solicitors and counsel would be able to attend. I also mentioned that judgment was awaited on another injunction matter; *Thurrock and Adams v Persons Unknown*, which also concerned petrol stations. I said it was expected in a week or so and would be important and relevant to this matter.
7. Unfortunately Johnson J declined to grant an adjournment, on the grounds that:
 - a) The original application was made in somewhat emergency circumstances and so it was appropriate that it is brought into open court at the earliest practical time, so that the Claimant's arguments could be heard.
 - b) This did not prejudice mine or anyone else's rights or arguments. That is because we could hear the arguments in open court and at any point in the future, we could make an application to vary the order or have it set aside if we wished.

c) It remained appropriate to ventilate the matter in open court now, notwithstanding the pending *Thurrock* judgment. If the order was made in terms that were too wide an application could be made in light of that judgment.

8. Just after refusing my request for an adjournment, Mr Justice Johnson commented that he had an appointment at 12.15 so he had limited time and was keen to resolve the hearing at 12. I understood that that was why the start time of the hearing had been brought forward to 10am, having previously been listed at 10.30am. The Claimant's counsel suggested that Johnson J should wait to allow for any defendants to arrive, given that the hearing had been listed to start at 10.30am. Johnson J decided to press ahead, but said that he would restart the hearing should any defendants arrive. This exchange is evident from paragraphs 2.1 and 2.2 of the attendance note of the hearing.

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 be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED

NANCY FRIEL

DATED 26 April 2023.....

Claimant: Shell UK Ltd, Shell International
Petroleum Company Ltd, Shell UK Oil Products
Ltd
Name of Witness : Jessica Branch
Statement No : 2
Exhibits :
Date : 26 April 2023

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

Defendants

STATEMENT OF JESSICA BRANCH

I, Jessica Branch of

WILL SAY AS FOLLOWS:-

1. I make this second statement in support of my challenge to the Claimants' applications to extend three injunctions.
2. The statements I make are from my own knowledge or belief unless otherwise stated. If not from my own knowledge I will identify the source. My solicitor drafted this statement having spoken to me on the phone and then emailed it to me for signature.
3. This statement addresses three issues:

- a) Mrs Justice Hill's request that I set out in more detail why I consider that I should be granted Interested Party status under CPR 40.9 with reference to the criteria set out at paragraphs 43 to 45 of Mr Justice Ritchie's judgment in *Esso v Breen* [2022] EWHC 2600 (KB).
- b) Mrs Justice Hill's request that I address the Claimant's assertion that I have delayed in bringing this challenge.
- c) The Claimant's indication at the end of court yesterday that I had already put in a skeleton argument in relation to the Shell Haven injunction.

Interested Party status under CPR 40.9

4. I have been shown paragraph 43 of the judgment. It sets out the "gateway test" as follows:

"Directly affected"

43.1 Is the person applying directly affected by the injunction? A person can be directly affected in many ways. The order may affect the person financially. It may affect the person's property rights or possession of property. It may affect the person's investments or pension. The order may affect a person's ability to travel or to use a public highway. The order may affect the person's ability to work or enjoy private life or social life or to obtain work and in so many other ways. It may affect rights enshrined in the Human Rights Act 1988.

Good point

43.2 Does the IP have a good point to raise? If the point raised is weak or irrelevant there is no need for the CPR rule 40.9 permission."

Directly affected

5. I have also intervened in this way before. In *NHL v Persons Unknown* [2022] EWHC 1105 (QB) Mr Justice Bennathan commented on my evidence about the effect of the order on me as follows:

"Ms Branch's witness statement expresses a general view that the terms of the order sought are so wide as to prevent protests that were lawful and, more specifically, sets out her concern that they might catch people such as her who, while not involved in [Insulate Britain] or any of its protests, might protest near some of the many roads specified in NHL's draft order and find herself inadvertently caught up in contempt proceedings."

6. In that case, Bennathan J found that the scenario suggested by me was not fanciful and would amount to a sensible basis to regard me as “directly affected”.
7. Bennathan J also found that:

“(2) Even absent that most direct connection, in a case where an order is sought for unnamed and unknown defendants, and where [as here] Convention rights are engaged, it is proper for the Court to adopt a flexible approach and a general concern by a person concerned with the political cause involved could, perhaps only just, fit within the term. To take an example far removed from the facts of this case, a member of a proselytising religious group who only attended their local place of worship might nonetheless be seen as directly affected by an order banning his co-religionists from travelling to seek converts.

(3) In a case where the Court is being asked to make wide ranging orders and, but for a successful rule 40.9 application, would not hear any submissions in opposition it seemed to me desirable to take a generous view of such applications.”

8. In *Esso v Breen* Ritchie J found that the protestors who wished to challenge the injunction in that case, Suzanne Everest and Hannah Shelley, were directly affected because:

“They are longer term conscientious objects against fossil fuel use. They seek to protest lawfully but actively. The injunction would have bound them and could have put them in breach by both the “public path” protest that they carried out on the 15th of February and the “car park” entrance protest that Hannah Shelley carried out on the 2nd of February and in addition could have put both in breach for the funeral protest they carried out on the 26th of June 2022 on DCO land.”

9. I consider that I am in a similar position. I set out in my first statement how I am deeply concerned by the climate change emergency and how we need to drastically reduce our use of fossil fuels in order to sustain life on this planet. I set out how I regularly participate in environmental protests, sometimes with my children. I also set out my specific objections to Shell as a fossil fuel corporation which plans to grow its fossil gas business by 20% in the coming years and which is engaged in a greenwashing campaign. It is fair to say that I, too, like Ms Everest and Ms Shelley, am a long term conscientious objector against fossil fuel use and Shell in particular.

10. Unlike Ms Everest and Ms Shelley I have not participated in protests at Shell Petrol Stations so I cannot point to any specific instances in the past when I would have been bound by and possibly in breach of the order. However I would like to participate in such protests in the future because, as I explained in my first statement, protesting at petrol stations is an effective way to gain the attention of people who drive cars and encourage them to think about their choices.
11. However I am concerned about the risks to me and my children in doing so, in light of these injunction Orders. This is because, as I explained in my first statement, I would be happy if protest that I participated in persuaded people to use their cars less and/or if petrol sales were to drastically reduce. This means that by participating in a protest in a Shell Petrol Station it is arguable that I would be doing so “*with the intention of disrupting the sale or supply of fuel to or from the said station*”. I understand that if, during such a protest, the entrance to the petrol station was blocked, even for a short while, I could fall within the definition of Persons Unknown and, subject to service, simultaneously be in breach of it. I set out in my statements examples of other ways I could be found to be in breach of the Order by participating in a peaceful protest at a Shell Petrol Station, including by encouraging other people to do a prohibited act.
12. I set out in my first statement similar concerns in relation to the Shell Centre Tower and Shell Haven Orders.
13. I do not wish to be arrested, particularly with my children present. I do not want to have to defend committal proceedings and I do not want to be made a defendant to a civil claim. If I was to be found liable for contempt of court, or for the tort of conspiracy to injury by unlawful means, the consequences for me and my children, including my ability to work, would be grave. This means that I cannot take the risk of participating in protests at Shell Petrol Stations, the Shell Centre Tower or Shell Haven while these Orders remain in place. In short, the Orders directly affect me because they restrict my right to peacefully protest in the manner and location of my choosing.

Good point

14. Ritchie J also found that Ms Everest and Ms Shelley’s skeleton argument made some potentially good points in relation to the scope of that injunction. I am encouraged in this respect that Hill J commented that my counsel’s skeleton argument was well developed and ran to some 35 pages. I would respectfully suggest that that indicates that good points have been made on my behalf.

Factors

15. Ritchie J found that if an Interested Person gets through the two parts of the gateway the next issue is whether they should be required to be a party to take part of permitted to remain an IP with permission. Ritchie J found that the closer the connection between the IP and the claim or the defence the more likely the Court will require them to join the action to take part. He set out the factors that are relevant when considering the nature and degree of a non party's connection with proceedings. I set those factors out below, along with their application to my case.

(1) Whether the interested person will profit from the litigation financially or otherwise.

I will not profit from the litigation financially or otherwise.

(2) Whether the interested person is controlling the whole or a substantial part of the litigation.

I do not seek to control the litigation but I do seek to restrict the breadth of the injunction granted or indeed to prevent it being granted so that I can protest lawfully and exercise my rights under the European Convention on Human Rights especially Arts 10 and 11.

(3) Whether the final decision in the litigation will adversely affect the interested person, whether by way of civil rights, financial interests, property rights or otherwise.

I accept that the decision simply to grant the injunction would not affect my property rights or financial interests. However, it does affect, and has affected, my civil rights. Furthermore, were I to breach this injunction, any proceedings would affect my financial interests and expose me to prison.

(4) Whether the interested person is funding the litigation or the defence thereof.

I am not funding the litigation or the defence. I am only funding my own submissions.

(5) Whether there is a substantial public interest point or a civil liberties point being raised by the interested person.

The points that I raise are very similar to those raised by Ms Everest and Ms Shelley, which are the subject of Ritchie J's substantive judgment in that case ([2022] EWHC 2601). In particular, Ms Everest and Ms Shelley challenged the Claimant's reliance on economic torts and the application of s.12(3) Human Rights Act, as in this case. Ritchie J found the points raised by the IPs to be of wide public interest and to relate to fundamental civil liberties, namely Articles 10 and 11 of the European Convention on Human Rights.

- (6) *The court should take into account the wide or draconian nature of injunctions against unknown persons which may be geographically large or temporarily large or both. There should be a low threshold for interested persons to be able to take part in such broad and or wide orders.*

Ritchie J commented that "*the draconian nature and the breadth of large injunctions against persons unknown (PUs) leads me to consider that there is relatively low threshold to allow Interested Persons to make representations on a return date*". This was generically worded. The Orders in this case are also against PUs, and relate to some 1,065 petrol stations, as well as the Shell Centre Tower and Shell Haven oil refinery. It seems to me that these Orders are as broad and draconian in nature as in *Esso v Breen*, which related to the land surrounding a pipeline carrying aviation fuel, which is being built from Southampton to London.

- (7) *The costs risks and difficulties faced by interested persons who are affected by orders which they did not instigate.*

Ritchie J indicated in his judgment that there was no legal aid provided for civil liberties Interested Persons or conscientious objectors who wish to be involved and so Ms Everest and Ms Shelley had to fund their representations themselves. He concluded: "*In my judgment it is not unreasonable for them to do so with a reduced (but not extinguished) cost risk, on the contrary it is just and fair.*" The same applies to me.

- (8) *Any prejudice which would be suffered by the Claimant in granting the Interested Persons their request and refusing to require them to become parties.*

- a) As in *Esso v Breen* the Claimant in this case has not put forward any evidence of prejudice. Indeed its counsel expressly stated on several occasions that Shell did not wish to shut me out, and accepted that the issues raised on my behalf needed to be looked at.

- b) The Claimant would not necessarily have had any greater notice of my submissions had I applied to be a named defendant, as the Orders only require 24 hours' notice to be given by any defendant wishing to vary or discharge them. I understand that my skeleton argument and my first statement were served on the Claimant at 10.01 on Monday 24 April 2023, so over 24 hours before the hearing at 10.30 on Tuesday 25 April 2023.
- c) I understand that it may be more difficult for the Claimant to achieve a costs order against me as an IP rather than a named defendant. However Ritchie J expressly did not characterise this as prejudice, on the grounds that (1) costs orders are a result of the courts exercising discretion under the CPR, and (2) the Claimant could have joined Ms Everest and Ms Shelley as defendants had they wanted to. The same applies to me, not least because counsel for Shell confirmed in court yesterday that her client did not consider that I was suitable to be added as a named defendant.

Delay

- 16. I am told by my solicitors that Ms Justice Hill also asked that I give further evidence in relation to the Claimant's assertion that I have delayed in making submissions challenging these Orders.
- 17. I explained in my first statement that I was aware that a fellow protestor associated with XR, Nancy Friel, attended the return hearing for the Shell Petrol Stations injunction before Mr Justice Johnson on 13 May 2022 and was denied the adjournment she requested in order to obtain legal representation to challenge it.
- 18. I understand the Claimant to be saying that because I was aware of that injunction being granted (without hearing any opposition) that I should have applied to set it aside at a later date.
- 19. The Order that Johnson J granted to Shell on 13 May 2022 is due to expire on 12 May 2023. The claimants now apply for that Order (and the Shell Haven and Shell Centre Tower Orders) to continue for a further 12 months with an amendment, namely the removal of the word "environmental" from the definition of Persons Unknown, which would mean that the Orders apply to many more people. There are still no named defendants.

20. I wish to be heard on the issue of whether these Orders should be re-granted in circumstances where there are still no named defendants and the Claimants expressly contemplate a further delay in progressing the litigation. I am directly affected by whatever Orders the court makes, on this occasion.
21. I was similarly concerned by the Order that Johnson made a year ago and the restrictions it represented to my right of protest. However I was content to wait until the Order expired, to see whether Shell proposed to extend it, in the knowledge that if they did there would be another return hearing which would be the best and most efficient way to bring a challenge, rather than by generating an additional, costly hearing purely for my own application. Such a hearing would also place me at considerable cost risk, as it would have been solely initiated by me, rather than a return hearing which would have to take place in any event.
22. The Claimant refers to a certificate of service that indicates that my solicitors were served with a sealed Order on 1 March 2023. The Claimant also points out that there is express provision in the Orders for notice to be given by persons wishing to apply to vary or discharge their terms.
23. I understand that my solicitors were served with an application and draft Order (not sealed Order as indicated in the certificate of service) on 1 March 2023. However that application was for the review hearing in the three proceedings to be listed and heard together at the same time. It did not give any details of the nature of the Orders sought on this occasion.
24. I understand that it was not until 6 April 2023 that my solicitors were served with the applications to extend the Injunction Orders. The draft Orders appended to those applications required named defendants to make submissions at least 24 hours before the hearing. I complied with that requirement, even though I am not a named defendant.
25. My solicitors were not served with the Claimant's skeleton argument until 17.26 on Thursday 20 April 2023. I instructed my solicitors to proceed with a challenge at 14.51 on Friday 21 April 2023. My solicitors were provided with access to the Supplemental Bundle at 15.29 on Friday 21 April 2023 and the Hearing Bundle at 15.30 on Friday 21

April 2023. As above, my solicitors then served a skeleton argument on my behalf at 10.01 on Monday 24 April 2023, just over 24 hours before the hearing.

Previous skeleton argument

26. It was said in court that I had put in a skeleton argument in the Shell Haven injunctions. It is correct that I put in a skeleton argument in respect of the Shell Haven and Shell Centre Tower injunctions in advance of the joint review hearing that took place on 28 April 2022. That document is in the Claimant's Second Supplementary Bundle at p.14. However, there was a subsequent development in the case, in that I became aware of another person who wished to make representations along the lines of those that I wished to make, and who was in fact made a party to the proceedings.
27. What happened was that Andrew Smith instructed my solicitors to apply for him to be named as a defendant in order to bring the challenge on his behalf. I was aware of that, and that he was making similar points to those I would wish to make. Accordingly, there was no need, at that point, for me to be involved and I did not seek to remain involved. I understand that Mr Smith later provided an undertaking and was removed as a named defendant by consent by Order of Mr Justice Knowles dated 21 November 2022.
28. In any event, I expected that the injunction as then granted would last for a year. I decided after that, and after Mr Smith had made his representations, that I could live with those restrictions and did not need to challenge the order made further. I am dismayed to learn that the Claimants now seek potentially another year in relation to each of the three injunctions before the court, and I am told that they said to the court that the injunction might need further extension, were named defendants to resist the claim and seek to file evidence. In those circumstances, bearing in mind that the injunctions include the headquarters of Shell, so of great symbolic importance, and also lawful activities at petrol stations, such as placing a leaflet on a car, that my arguments be heard now. If that involves making an application under CPR Part 40.9, that is what I wish to do.

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 be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED

JESSICA BRANCH

DATED

.....26 April 2023.....

Claimant: Shell UK Ltd, Shell International
Petroleum Company Ltd, Shell UK Oil Products
Ltd
Name of Witness : Jessica Branch
Statement No : 1
Exhibits :
Date : 24 April 2023

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

Defendants

STATEMENT OF JESSICA BRANCH

I, Jessica Branch of

WILL SAY AS FOLLOWS:-

1. I make this statement in support of my challenge to the Claimants' applications to extend three injunctions.
2. The statements I make are from my own knowledge or belief unless otherwise stated. If not from my own knowledge I will identify the source. My solicitor drafted this statement having spoken to me on the phone and then emailed it to me for signature.

3. I am a 39 year old mother of two young children who has been a member of Extinction Rebellion (XR) since April 2019 when I encountered a group of people of all ages and backgrounds protesting in the road while I was taking my daughter to a doctor's appointment. I am not a member of or associated with Insulate Britain or Just Stop Oil, nor have I attended any of their protests.
4. I grew up in the US on Cape Cod, a small peninsula and islands just south of Boston Massachusetts. It's an area that is extremely vulnerable to climate change. On Cape Cod we have seen an increase in major storms, and just a few weeks ago we had a storm that killed two people, left thousands without power, felled trees, and caused an increase in beach erosion. Ocean levels are rising and my family home could be partially underwater by the end of the century; our salt marshes are already losing some of the robust ecology they had when I visited as a child. Our leaders have failed us in making any meaningful advances towards slowing down climate change; we are currently looking at a temperature rise of 2.4 degrees, which the UN says will spell disaster for humanity. Like any parent, my daughters and their future are the most important things to me. To protect their future I feel that we need to act, and act quickly to mitigate the climate and ecological emergency (CEE).
5. I became aware of the various injunctions issued by Shell last year. In particular I was aware of the injunction issued in relation to Shell Petrol Stations in April 2022. A fellow protestor associated with XR, Nancy Friel, attended the return hearing before Mr Justice Johnson on 13 May 2022. She explained that she was an environmental activist concerned by the order and sought an adjournment to enable her or another activist from her group to obtain legal representation to challenge it. Mr Justice Johnson declined to adjourn the hearing on the grounds that the order was made on an emergency basis and it was appropriate for it to be ventilated in open court at the earliest opportunity. Accordingly judgment was given and the order was granted without the benefit of any representations on behalf of Ms Friel or indeed anyone.
6. Each of the three Orders that Shell is seeking to extend on this occasion contain provisions requiring that any person applying to vary or discharge them must provide their full name and address and must also apply to be joined as named defendant to the proceedings at the same time.
7. I have previously challenged injunctions that cause me concern in relation to the restrictions they impose on my ability to peacefully protest. In particular, Mr Justice Chamberlain granted an interim injunction order to National Highways Limited (NHL) on 17 March 2022 which concerned me because of its wide ranging geographical scope

among other issues. The Order contained the same provision as the Shell Orders, requiring that any person applying to vary or discharge it must provide their full name and address and must also apply to be joined as named defendant to the proceedings. I instructed counsel to challenge NHL's application for final Order but I did not apply to be joined as a named defendant because I was worried about the personal and financial risks that I would incur in doing so. The application was heard before Mr Justice Bennathan on 4-5 May 2022. At the start of the hearing Mr Justice Bennathan heard submissions on my status to make representations as to the proposed final Order, given that I was not a named defendant and had not applied to be so. He found that I was directly affected by the proposed Order for the purposes of CPR 40.9 and granted me permission to seek to vary it without requiring me to apply to be a defendant, as he considered that the provision of Mr Justice Chamberlain's Order requiring an application to be named as a defendant conflicted with CPR 40.9.

8. I consider that I am directly affected by the Orders, for the reasons set out below. Accordingly, I wish to challenge them as an interested person pursuant to CPR 40.9.

Shell Petrol Stations Order

9. I understand that Shell is seeking to continue the Order of Johnson J dated 17 May 2022, known as the Shell Petrol Injunction Order, until April 2024.
10. The Shell Petrol Injunction Order applies to Persons Unknown who are "*damaging and/or blocking the use of or access to any Shell Petrol Station in England and Wales or to any equipment of infrastructure upon it, by express or implied agreement with others, in connection with environmental protest campaigns with the intention of disrupting the sale or supply of fuel to or from the said station*".
11. I wish to participate in protests that make people aware of the damage caused by fossil fuels and, in particular, their contribution to the CCE. Petrol stations are an obvious and symbolically important place to hold demonstrations, because that will gain the attention of people who drive cars and encourage them to think about their choices. I do not wish to directly cause financial harm to Shell. However, I am concerned by the use and sale of fossil fuels and I would be happy if a protest that I participated in did persuade people using the petrol station to use their cars less. Indeed I would be happy if petrol sales were to drastically reduce; we need to find sustainable ways to travel and to live or there will be no future for life on this planet. Therefore I am concerned that simply by

participating in a protest in a Shell Petrol Station I could be understood to be doing so “*with the intention of disrupting the sale or supply of fuel to or from the said station*”.

12. The Shell Petrol Injunction Order defines Shell Petrol Stations as “*all Petrol Stations in England and Wales displaying Shell branding (including any retail unit forming a part of such a petrol station, whatever the branding of the retail unit)*”. I understand that there are 1,065 of them in England and Wales. This concerns me. It is not clear to me precisely what area of land is included in this definition and in particular if it includes areas of the public highway or other areas, not necessarily owned by the Shell branded petrol station, where there is public access. For example, I am not sure what the position is where there is a Shell branded petrol station or retail unit as part of a service station. I would be nervous about participating in any protest at a service station where there was a Shell branded petrol station or retail unit, even if my protest was confined to areas that were not Shell branded.
13. While I do not intend to block access to any petrol stations, nor to cause damage to them, It seems to me that I would fall within the definition of Persons Unknown if a protest that I was participating in on the public highway, or on public land not owned by Shell but with public access, such as a service station, with the intention or reducing the general public’s use of fossil fuels, and that protest was to impede access to a petrol station entrance, or to cause a blockage that restricted access to a petrol pump, even for a very short while.
14. The Order prohibits certain acts done with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station. Given that is my general purpose in attending a protest at a petrol station – to encourage people to reconsider their use of fossil fuels and take the decision to use them less or not at all – I am concerned that any of the prohibited acts would apply to me. Those include:
 - a) Blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station or to a building within the Shell Petrol Station. This means that, subject to service, I would be in breach for participating in the type of protest referred to above, on the public highway or in a service station and impeding access even for a short while.
 - b) Affixing or locking themselves, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station. This means that if I wanted to attach a leaflet or flyer to a petrol pump or a vehicle in a Shell Petrol Station I would be in breach of the Order (subject to service). This would include leafleting in a public area not owned by Shell but within a service station

area with a Shell-branded petrol station or retail unit, or on the public highway in the vicinity, given the broad definition of a Shell Petrol Station.

c) Encouraging or assisting another person to do the prohibited acts. I do not know what types of things would be considered to be “*encouraging*”. If I was to be present and chanting while someone else was blocking an entrance, even briefly, or placing leaflets on cars, it seems to me that that would be encouraging and therefore a prohibited act.

15. It seems to me that if I was to wave banners and hand out leaflets on the public highway, or enter the forecourt of a petrol station in order to carry out a protest, carrying a banner and handing out leaflets that were intended to make people aware of the damage caused by the use of fossil fuels, blocking the pedestrian entrance for a short while and/or placing leaflets on cars, I would be in clear danger of breaching the Order, which concerns me.

16. Further, I understand that Shell are seeking to amend the Order so that any protesters are caught by it, not just environmental protesters. That seems to me to significantly increase the number of people who could be caught by it.

Shell Centre Tower Order

17. I understand that Shell is seeking to continue the Order of Mr Justice Bennathan dated 3 May 2022, known as the Shell Centre Tower Injunction Order, until April 2024.

18. The Shell Centre Tower is an essential site of protest for our movement. It is the headquarters of a major oil company, which is continuing to make millions extracting fossil fuels across the world. It is knowingly and recklessly causing or creating carbon emissions which are fuelling the ECC.

19. Shell is engaged in an active and cynical greenwashing campaign and it is profiting obscenely from the surge in energy prices caused by Russia’s invasion of Ukraine. It made profits of £32bn in 2022, the biggest profits in its 115 year history. Out of that it paid just \$134m in British windfall taxes.

20. Shell is still committed to exploring for new sources of oil and gas. It plans to grow its fossil gas business by 20% in the coming years.

21. By protesting outside Shell’s UK headquarters we want to make the public aware of Shell’s ecocidal practices. The fossil fuel industry has got to stop if we are to have any

chance of survival as a species. XR and many other protest groups see the Shell Centre Tower as a key site from which to make that point.

22. We often gather outside the building, holding banners and signs and chanting slogans, to make the reason for our protest clear. Our protests do cause some disruption, but we allow traffic to pass on the road, and we do not prevent pedestrians from passing through. In fact we welcome interaction with the public and make the most of those opportunities to speak to people about our protest.
23. The Shell Centre Tower Order applies to persons unknown damaging the Shell Centre Tower or blocking the entrance. It prohibits blocking the entrance or sticking anything to the building. I often join protests run by XR with my children. I would be nervous to join a protest outside the Shell Centre Tower because of this injunction. Were we to block an entrance, even inadvertently for a few minutes, during the course of such a protest we would, as I understand it, fall within the definition of Persons Unknown. Subject to service, we would also be in breach of the Order just for blocking the entrance inadvertently or fixing a flyer to the outside wall.
24. This Order would make me feel unsafe participating in these protests, particularly with my children, as we could unintentionally end up bound by the order and at risk of breaching it. This is very distressing to me. I consider it a moral imperative that we voice our objections to the CEE and the need to avert this catastrophe. This Order restricts my ability to do that.

Shell Haven Injunction Order

25. I understand that Shell is seeking to continue the Order of Mr Justice Bennathan dated 3 May 2022, known as the Shell Haven Injunction Order, until April 2024.
26. The Order captures anyone who enters or “remains” at the Shell Haven site without consent, or blocks any of its entrances. The wording suggests that Shell staff could request me to leave an area outside the site, and if I chose to remain I would be caught by the Order, even though I had not entered the site, blocked any of its entrances, or sought to do so.
27. I could then, subject to service, be in breach for placing a poster or flyer on the external walls of the site.
28. Each of the Orders state that they are not intended to prohibit lawful protests. That does not reassure me. The fact that they are not intended to have that effect does not mean

that they won't, in practice, have that effect. If the Orders state on their face that a certain act is prohibited then the police are likely to arrest people who are doing that act, even if it was in fact lawful and not intended to be caught by the Order. If I was arrested it would be frightening for me and even more so for my children if they were with me. If I was added to the Order that would be catastrophic for me, regardless of whether the action for which I was arrested was in fact a proportionate act of protest. I do not have the resources to defend a civil action. I understand that judgment would likely be entered against me if I did not enter a Defence. That would result in damages and costs being awarded against me. It may cause numerous difficulties for me, such as obtaining credit and in the job market. These things make me very worried about attending protests against Shell, which I find unacceptable.

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 be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED

JESSICA BRANCH

DATED ...24 April 2023.....

CLAIM NO: QB-2022-001259

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN:-

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant

and

**PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING KNOWN AS
SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL CENTRE TOWER")
WITHOUT THE CONSENT OF THE CLAIMANT, OR DAMAGING THE BUILDING OR
DAMAGING OR BLOCKING THE ENTRANCES TO THE SAID BUILDING**

Defendants

STATEMENT OF ANDREW DANIEL SMITH

I, Andrew Daniel Smith of
FOLLOWS:-

WILL SAY AS

1. I make this statement in support of my application to vary the injunction made by Mr Justice Sweeting in the above referenced claim.
2. The statements I make are from my own knowledge or belief unless otherwise stated. If not from my own knowledge I will identify the source.
3. I am a protestor associated with Extinction Rebellion. I confirm that I fall within the definition of persons unknown as I have entered the Shell Centre Tower without the consent of the Claimant for the purposes of protesting.

The importance of the climate emergency

4. Climate breakdown is the single most important crisis facing our planet and human existence. It threatens the lives of millions of people (including my four nieces who have

no say over the world they are going to inherit), and the livelihood of many millions more.

5. It is already contributing to mass extinctions across the planet, severe weather and inhabitable environments. The impacts of climate breakdown are being felt, predominantly, in the Global South with black, indigenous, and people of colour being disproportionately affected. I do not see that I have any option but to participate in direct action protests because our Government is not doing enough to avert this catastrophe, and the large, wealthy corporations it supports are knowingly contributing to it on a vast scale daily.
6. Ken Saro-Wiwa was executed along with other activists as a direct result of taking action against Shell in response to the environmental impact of oil extraction in the Niger delta. I have white male privilege that allows me to take direct action at the heart of the problem in this country without risk to my own life. Shell is still committed to exploring for new sources of oil and gas and does not have any plans to reduce the overall amount of oil and gas it produces by 2030, the date by which IPCC (Intergovernmental Panel on Climate Change) scenarios say emissions from oil, gas, and coal will need to have substantially reduced. I firmly believe I am taking direct action and using my right to protest to prevent a bigger crime from happening.

The importance of the Shell Centre Tower

7. The Shell Centre Tower is an essential site of protest for our movement. It is the headquarters of a major oil company, which is continuing to make millions extracting fossil fuels across the world and in so doing is knowingly causing or creating carbon emissions which are fuelling the climate crisis.
8. At a recent shareholder meeting Shell shareholders voted to relocate its headquarters to London from The Netherlands, according to Bloomberg, *“a country with which relationships have become increasingly strained due to environmental concerns”*. The move sees the firm avoid a type of tax payable on dividends in the Netherlands whilst increasing flexibility in regards to raising capital and acquisition efforts. Shell claims it is part of the solution, *“using lower-carbon energy products to reduce GHG emissions”*, but the company’s plans include growing its fossil gas business by 20% in the coming years until it occupies over half of Shell’s energy business by 2030.

9. Our intention is to make the public aware of Shell's ecocidal practices and that the fossil fuel industry has got to stop if we are to have any chance of survival as a species. Extinction Rebellion and many other protest groups see the Shell Centre Tower as a key site from which to make that point.

The location of the Shell Centre Tower protests

10. The Shell Centre Tower protests extended to the street outside and were not confined to the building. Our methods are generally confined to gathering outside the building, holding banners and signs and chanting slogans, to make the reason for our protest clear. Our protests do cause some disruption, but we do allow traffic to pass on the road, and we do not prevent pedestrians from passing through the group, in fact we welcome interaction with the public and make the most of outreach opportunities.
11. At the recent protests we were keen to engage with Shell staff members and bring our protest directly to those who are part of the destructive business practice. We did not block entrances or exits and allowed space for staff members to pass, it was Shell's decision to lock down the building as a result of our protest.
12. Our presence at Shell is a tiny reality check on the multi-million pound "Greenwash" campaign that the corporation uses to skew public opinion of its operations.

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 be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNED

ANDREW DANIEL SMITH

DATED28th April 2022.....