

1 IN THE HIGH COURT OF JUSTICE
2 KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London WC2A 2LL

3 Monday, 11th March 2024

4 Before:
5 MR. JUSTICE SOOLE

- - - - -

BETWEEN:

6 SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED
7 Claimant (QB-2022-001259)

8 SHELL U.K. OIL PRODUCTS LIMITED
9 Claimant (QB-2022-001420)

10 SHELL U.K. LIMITED
11 Claimant (QB-2022-001241)

- and -

12 PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING
13 KNOWN AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL
14 CENTRE TOWER") WITHOUT THE CONSENT OF THE CLAIMANT, OR
15 DAMAGING THE BUILDING OR DAMAGING OR BLOCKING THE ENTRANCES
16 TO THE SAID BUILDING
17 Defendant (QB-2022-001259)

18 PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE
19 KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED
20 IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE
21 CLAIMANT, OR BLOCKING THE ENTRANCES TO THAT SITE
22 Defendant (QB-2022-001241)

23 PERSONS UNKNOWN DAMAGING, AND/OR BLOCKING THE USE OF OR
24 ACCESS TO ANY SHELL PETROL STATION IN ENGLAND AND WALES, OR TO
25 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

- - - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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]

- - - - -

1 STACEY KC

2 MR. JUSTICE SOOLE: Yes?

3 MISS STACEY: My Lord, may it please you. I appear on behalf of
4 the claimants in this matter and Mr. Laurie, Mr. Charles
5 Laurie ----

6 MR. JUSTICE SOOLE: Good morning.

7 MISS STACEY: ---- who is not currently a defendant but he is one
8 of the proposed named defendants that form the subject of our
9 application.

10 My Lord, this ----

11 MR. JUSTICE SOOLE: Thank you very much for attending. What
12 I will do is hear from Miss Stacey first of all and you will
13 have every opportunity to say anything you want to; all right?
14 Thank you very much.

15 There is nobody else here who is ----

16 MISS STACEY: There is nobody else here. My Lord, you will have
17 perhaps gathered -- I will come to some housekeeping -- but in
18 a nutshell this application is for three matters: first, for
19 joinder of in addition I say, to persons unknown, an
20 additional 14 named defendants which are set out in a schedule
21 which I will take your Lordship to. That is the first matter.
22 The second matter is an associated application following on
23 from the first, for alternative service.

24 MR. JUSTICE SOOLE: Of this application?

25 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?

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.

1 STACEY KC

2 MISS STACEY: Yes, my Lord.

3 MR. JUSTICE SOOLE: 6.7 does not arise. Well, wait a moment. So
4 6.9 is to do with service of the claim form so we are applying
5 6.15, are we not, other documents; is that right?

6 MISS STACEY: 6.15.

7 MR. JUSTICE SOOLE: Or 6.27?

8 MISS STACEY: 6.15 is the other documents in relation to the terms
9 of service.

10 MR. JUSTICE SOOLE: Yes, but do you not start at 6.27? Rule 6.15
11 applies to any documents in the proceedings as it applies to
12 the claim form.

13 MISS STACEY: Yes, and that reads into the other documents in
14 addition to the claim form, the provisions of 6.9.

15 MR. JUSTICE SOOLE: And then we go to 6.15.

16 MISS STACEY: Which is the alternative service provision, my Lord.

17 MR. JUSTICE SOOLE: *(Pause)* So it is not 6.9, is it?

18 MISS STACEY: 6.9 is ----

19 MR. JUSTICE SOOLE: Sorry, I just want it absolutely clear.

20 MISS STACEY: My Lord, I am sorry if I am not being clear. 6.9 is
21 the provision which provides for service at the last known
22 address in respect of an individual. We have effectively
23 viewed those provisions. We have been provided with the last
24 known address and therefore in light of the obligation to
25 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 L A U R I E

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?

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 LAURIE

2 MR. LAURIE: All I can say is if you found it confusing imagine
3 how I found it confusing.

4 MR. JUSTICE SOOLE: I have not found it so much "confusing" as
5 I have an obligation to make sure that the procedures are
6 followed immaculately.

7 MR. LAURIE: I understand.

8 MR. JUSTICE SOOLE: You are right, that does take sometimes take
9 some to sort out.

10 MR. LAURIE: There is such a thing as too much information. I
11 think I have four Lever Arch files now and five e-mails of
12 information, some of which duplicate each other, some are
13 different. When I was working I used to deal with property
14 law and things like that I so I am used to it. But I was
15 confused.

16 MR. JUSTICE SOOLE: What I say in answer to that is that again the
17 supplied information has often been the court and certainly
18 often from me when I have said more information rather than
19 less has to be provided.

20 MR. LAURIE: Okay.

21 MR. JUSTICE SOOLE: So it cuts both ways in that sense. I also
22 appreciate a lot of people (do not like, unlike me, who like
23 physical documents) prefer things electronically. I recall
24 making people serve documents personally and then being told
25 by a number of litigants in person they would much rather have

1 LAURIE

2 it by e-mail. To an extent I have learned a lesson.

3 Yes, please go on.

4 MR. LAURIE: I take what the representative said. I guess it is
5 not the time to talk about it now, but I would just gently say
6 that there is a huge list of 260 different actions provided in
7 the documentation they gave to us.

8 MR. JUSTICE SOOLE: Yes.

9 MR. LAURIE: Approximately none of them relate to any of the
10 things covered by the injunctions, so that would show we have
11 fairly well ----

12 MR. JUSTICE SOOLE: You mean the protests?

13 MR. LAURIE: The protests. We have by the injunctions and the
14 cover, and I do not think there are many in there that are...
15 There are 260, I have not looked at them all. I scanned
16 through it.

17 MR. JUSTICE SOOLE: Yes.

18 MR. LAURIE: But, yes, I have not given ----

19 MR. JUSTICE SOOLE: I think that evidence has been put in to say
20 there is an ongoing general campaign, therefore it may pop up
21 anywhere. You do not look at one place at a time and say,
22 "That is finished there", because the tactics in a campaign
23 are changing all the time. I think that is the argument.

24 MR. LAURIE: Yes, I had understood that. The counter to that is
25 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LAURIE: Okay.

MR. JUSTICE SOOLE: It is matter for you if you wish to do so, you have a right to silence on that.

MR. LAURIE: I think it is generally accepted I was there.

MR. JUSTICE SOOLE: Thank you, that is ----

MR. LAURIE: I think that is all I can say.

MR. JUSTICE SOOLE: I think that is probably sufficient for the 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

1 STACEY KC

2 Johnson J's dated ----

3 MR. JUSTICE SOOLE: 17th May 2022.

4 MISS STACEY: Yes. There was an order before that by McGowan J
5 which specifically deals with service of future documents,
6 that needs to be sent to your Lordship and we are going to do
7 that now.

8 MR. JUSTICE SOOLE: I have another May 2022 order.

9 MISS STACEY: That will be Bennathan J no doubt.

10 MR. JUSTICE SOOLE: It does not have any name on it.

11 MISS STACEY: Is that in relation to Haven and Tower?

12 MR. JUSTICE SOOLE: That is the Tower order.

13 MISS STACEY: That would be Bennathan J.

14 MR. JUSTICE SOOLE: Right. Then I have the Haven order of... Who
15 is that?

16 MISS STACEY: It is the same date, Bennathan J. He dealt with
17 those two together.

18 MR. JUSTICE SOOLE: Yes.

19 MISS STACEY: The one you want is the one, my Lord, which you do
20 not have.

21 MR. JUSTICE SOOLE: I would like to see that.

22 MISS STACEY: I can hand it up to you electronically.

23 MR. JUSTICE SOOLE: All right. *(Pause)* That was the order of
24 Johnson J. That was a continuation order ----

25 MISS STACEY: A continuation, indeed.

1 STACEY KC

2 MR. JUSTICE SOOLE: ---- hence it refers to petrol stations.

3 MISS STACEY: Hers is petrol stations, yes.

4 MR. JUSTICE SOOLE: Hers is paragraph 9.

5 MISS STACEY: Hers is paragraph 9.

6 MR. JUSTICE SOOLE: "Documents" with a capital "D".

7 MISS STACEY: "The claimants" which we are specifically defined as
8 per the first schedule. Those are specific documents but
9 then, my Lord, you have an additional provision ----

10 MR. JUSTICE SOOLE: I am looking at paragraph 9. Service of this
11 order of the "claim documents" they are called.

12 MISS STACEY: Those are the documents in Schedule 1. But my Lord
13 can I ask you, before you look at Schedule 1, to look at
14 paragraph 11, "any further documents in these proceedings".

15 MR. JUSTICE SOOLE: Ah.

16 MISS STACEY: You will note that those are the same methods,
17 e-mail, uploading with the link ----

18 MR. JUSTICE SOOLE: Brackets "(other than any defendant who
19 subsequently is named in the proceedings"?

20 MISS STACEY: Indeed, yes. This is in relation to persons
21 unknown.

22 MR. JUSTICE SOOLE: Yes. So that is all to do with persons
23 unknown.

24 MISS STACEY: Yes.

25 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

1 STACEY KC

2 undertakings that have be provided.

3 MR. JUSTICE SOOLE: Yes.

4 MISS STACEY: The named individuals who are set out in the
5 schedule in green, my Lord, are those who have not provided
6 undertakings. I referred you to you Ms. Ireland who refused
7 positively. In relation to the other 13, no responses have
8 been received.

9 That brings me, I think, back to service, just to
10 satisfy your Lordship that they have been properly served, all
11 documents have been sent to them.

12 MR. JUSTICE SOOLE: Service of the application.

13 MISS STACEY: Indeed, yes. Back to Ms. Oldfield's fifth witness
14 statement in the supplemental bundle if you would.

15 MR. JUSTICE SOOLE: Yes.

16 MISS STACEY: At page 192, she attaches a spreadsheet setting out
17 the names of 15 individuals. That includes Mr. Gingell, but
18 he has subsequently given an undertaking ----

19 MR. JUSTICE SOOLE: Are we looking at page ----

20 MISS STACEY: 19, my Lord.

21 MR. JUSTICE SOOLE: No, the spreadsheet at page 205?

22 MISS STACEY: Yes. The names, I note, have come off on the left-
23 hand column. I have some hard copies, just so we are clear
24 who we are dealing with. *(Same handed)*

25 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

1 STACEY KC

2 delivery, which was then attempted as a ----

3 MR. JUSTICE SOOLE: It has to be clear it is hand delivery to the
4 address not to the person.

5 MISS STACEY: Or by hand delivery to the addresses.

6 MR. JUSTICE SOOLE: I will leave you to draft it.

7 MISS STACEY: I have the point.

8 MR. JUSTICE SOOLE: It has to be made clear.

9 MISS STACEY: Yes. So I will insert that wording at the end of
10 3.1.1. 3.1.2, my Lord, deals with Louise Harris. The last
11 two sub-paragraphs come out. In relation to, over the page,
12 Ms. Burns, that can stay because we have managed to serve to
13 LinkedIn.

14 MR. JUSTICE SOOLE: This is all addressed in the future by
15 sending.

16 MISS STACEY: No, no ----

17 MR. JUSTICE SOOLE: It needs to be made clear by "the sending of";
18 you need to make clear it is retrospective.

19 MISS STACEY: It is all retrospective, yes. We can amend that to
20 make it clear that it did not include the supplemental bundle.

21 MR. JUSTICE SOOLE: Paragraph 4 again merges the two.

22 MISS STACEY: Yes, it does.

23 MR. JUSTICE SOOLE: That needs to be unscrambled.

24 MISS STACEY: I suggest that in paragraph 4 we need a new
25 provision dealing with future documents, my Lord.

1 STACEY KC

2 MR. JUSTICE SOOLE: Yes.

3 MISS STACEY: Future documents. I suggest, if I may ----

4 MR. JUSTICE SOOLE: Before we end on section 3, what is the
5 position, there is no provision here I think you mentioned
6 before, on any party applying to set aside?

7 MISS STACEY: That is going to come in at the end, my Lord.

8 Hill J's order did. I suggest we insert that at the end at as
9 a new paragraph 21, "Any person who wishes to vary or
10 discharge the order", it is a general liberty to apply
11 provision. That can come in at the end.

12 MR. JUSTICE SOOLE: There is no way in which ----

13 MISS STACEY: Sorry, my Lord, it could cover the direction. The
14 reason I suggest it comes in at the end is it does not simply
15 relate to service, it might deal with directions too. It
16 ought to be liberty to apply in relation to everything.

17 MR. JUSTICE SOOLE: Saying it to be good service, that will not be
18 conclusive, will it?

19 MISS STACEY: No, that is in relation to the past.

20 MR. JUSTICE SOOLE: No, but as to the past, that will not be
21 conclusive, will it, an order that it is good service?

22 MISS STACEY: No, no, in relation for example, it is good service
23 for the purposes of CPR Part 6, but it does not prove that the
24 documents have come to the attention of the individuals for
25 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

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.

1 STACEY KC

2 MISS STACEY: Indeed. The point I am seeking to make it is not an
3 application for permission to amend that needs to necessarily
4 be sealed.

5 MR. JUSTICE SOOLE: Sorry?

6 MISS STACEY: My Lord, the bit in square brackets in paragraph 7
7 is therefore out of an abundance of caution but I suggest we
8 do not need those words.

9 MR. JUSTICE SOOLE: Yes, but are you applying to amend, to
10 re-amend the claim form?

11 MISS STACEY: No, my Lord, I am applying for joinder and upon the
12 joinder we will add the names of the named persons. It is a
13 consequence of the application for joinder. I am not applying
14 to amend. Those persons ----

15 MR. JUSTICE SOOLE: Is that not what happens? Do you not amend
16 the claim form when you add names to it?

17 MISS STACEY: It is the practical consequence, yes, but I have not
18 made an application for permission to amend because I am
19 applying for defendants to be joined; that is my substantive
20 application.

21 MR. JUSTICE SOOLE: Right.

22 MISS STACEY: If you grant me my application for joinder I will
23 add the names of those defendants to the claim form and to the
24 particulars of claim.

25 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

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

1
2 final hearing.

3 MR. JUSTICE SOOLE: It needs a date for the interim injunction,
4 does it not?

5 MISS STACEY: Yes, I would have thought. Currently we suggested
6 one and a half days.

7 MR. JUSTICE SOOLE: It has taken us nearly a day to do directions.

8 MISS STACEY: A substantive hearing a day, possibly plus a bit of
9 reading time, a day and a half in total.

10 MR. JUSTICE SOOLE: No, we do not include reading time in the
11 estimate, the estimate is from counsel getting up and the
12 final defendant sitting down. In this case there might be a
13 reserved judgment, I suppose.

14 MISS STACEY: I would have thought a day then, my Lord. Yes.

15 MR. JUSTICE SOOLE: In which case would it be sufficient to have a
16 date for acknowledgment of service some time not necessarily
17 long before then.

18 MISS STACEY: Yes. That is five weeks between now and then I am
19 told. That gives us a window of five weeks for any directions
20 your Lordship is proposing to make, acknowledgment of service.

21 MR. JUSTICE SOOLE: I would not propose a date of defence before
22 the hearing.

23 MISS STACEY: A date for the acknowledgment of service, yes, my
24 Lord. That would be on the basis that permission is given,
25 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

1 STACEY KC

2 of the order ----

3 MR. JUSTICE SOOLE: I do not want to give a specific day, I am not
4 going to give a specific day.

5 MISS STACEY: No, with a time estimate of one day.

6 MR. JUSTICE SOOLE: The hearing has to say what it is, it is for a
7 hearing of?

8 MISS STACEY: I put in brackets as just a suggestion for a
9 continuation of the orders or a review as to whether the ----

10 MR. JUSTICE SOOLE: Is not review, a review of the interim
11 injunction?

12 MISS STACEY: It is a review of the interim injunction and
13 directions for a final hearing.

14 MR. JUSTICE SOOLE: Review of the interim injunction expiring
15 12th May.

16 MISS STACEY: Yes, and directions.

17 MR. JUSTICE SOOLE: And directions for trial.

18 MISS STACEY: Yes. We can take out the words "if possible prior
19 to 12th May" at the end of that paragraph.

20 MR. JUSTICE SOOLE: I wonder if it might be sensible to say a day
21 and a half.

22 MISS STACEY: Yes.

23 MR. JUSTICE SOOLE: Do you think?

24 MISS STACEY: I do. We have not therefore included any date for a
25 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

will be enough.

MISS STACEY: Yes. Then 18 is the requirement for any person who has not complied to apply. Then you have 19-21 actually these are just the repetition of the service against persons unknown provisions.

Then 22 my Lord is the discharging variation provision. Then costs. I just wonder in relation to 22, my Lord, Mr. Laurie will no doubt address you on this, he, for example, suggested that he would wish no not receive anything by post.

MR. JUSTICE SOOLE: Yes, I know most people ----

MISS STACEY: Indeed, that might be an additional, some words can insert in paragraph 22, we can say "may apply to vary and discharge including in relation to alternative service and" for example if they wish to receive the documents by e-mail or post in the brackets in order to accommodate that. That is certainly a point that Mr. Laurie may wish to mention to your Lordship.

MR. JUSTICE SOOLE: I think I will re-list this for 3 o'clock on Friday, but I cannot do it as my morning case may go over because one of the parties is in America, as I say.

MISS STACEY: When would you want the amended particulars of claim by?

MR. JUSTICE SOOLE: Including that as part of the, well, 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,

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?

1 STACEY KC

2 MR. JUSTICE SOOLE: John.lloyd@justice.gov.uk.

3 MISS STACEY: I have that.

4 MR. JUSTICE SOOLE: Can you also link... The Associate will give
5 you an address.

6 MISS STACEY: I will provide you with the amended draft by 4 p.m.
7 on Thursday.

8 MR. JUSTICE SOOLE: The quickest way of any document getting to me
9 is to go to my clerk.

10 MISS STACEY: Thank you.

11 MR. JUSTICE SOOLE: Fridays are more difficult because he has to
12 travel. Can I keep ----

13 MISS STACEY: The amended claim form?

14 MR. JUSTICE SOOLE: No, you need that.

15 MISS STACEY: No, no, you can keep that, my Lord. We have plenty.

16 MR. JUSTICE SOOLE: The amended particulars of claim.

17 MISS STACEY: You do not have the full amended claim form. Would
18 you like the whole pack? The rest of it is ----

19 MR. JUSTICE SOOLE: I think it is sufficient that I have for the
20 moment. That will be on the CE-File. I am not going to spend
21 too much time looking at them.

22 As you are here, do take the opportunity if there is
23 anything procedural you need to discuss between you.

24 MISS STACEY: Yes, before you rise my Lord, I think it is
25 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.)***

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25