

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

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant (QB-2022-001259)

SHELL U.K. OIL PRODUCTS LIMITED

Claimant (QB-2022-001420)

SHELL U.K. LIMITED

Claimant: (QB-2022-001241)

- and -

**PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING
KNOWN AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL
CENTRE TOWER") WITHOUT THE CONSENT OF THE CLAIMANT, OR
DAMAGING THE BUILDING OR DAMAGING OR BLOCKING THE ENTRANCES
TO THE SAID BUILDING**

Defendant (QB-2022-001259)

**PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE
KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED
IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE
CLAIMANT, OR BLOCKING**

THE ENTRANCES TO THAT SITE

Defendant (QB-2022-001241)

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

**DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID
STATION**

Defendant (QB-2022-001420)

CLAIMANTS' SKELETON ARGUMENT

Hearing: 11 March 2024

References in this Skeleton Argument – e.g. “[A/50]” are references to tabs/page numbers in the Hearing Bundle. References in this Skeleton Argument – e.g. “[AB/1/2]” are references to the tabs/ page numbers of the Authorities Bundle.

Suggested Pre-Reading: -

- Application Notice dated 11 February 2024 [A/4]
- Draft Order [A/10-14]
- Fourth Witness Statement of Alison Judith Oldfield (“**Oldfield 4**”) [A/21]
- Fifth Witness Statement of Alison Judith Oldfield (“**Oldfield 5**”) [C/191-199]
- Order of Fordham J dated 15 February 2024 [A/140]
- Order of Hill J dated 23 May 2023 [A/58]

A. INTRODUCTION

1. This is the Claimants’ Skeleton argument in relation to the Claimants’ application dated 12 February 2024 (the “**Application**”) [A/1/4-8] in respect of the three claims identified above (“**the Claims**”). By the Application, the Claimants seek to add defendants to claim **QB-2022-001420** (the “**Petrol Station Claim**”) as named parties and to secure a timetable for the progression of all three Claims.
2. The First and Second Claimants are, respectively, the freehold owners of (i) the Shell Haven Oil Refinery (“**Haven**”), a substantial fuel storage and distribution installation; and (ii) the Shell Centre Tower (“**Tower**”), a large office building. The Third Claimant is Shell UK Oil Products Limited. It markets and sells fuels to retail customers in England and Wales through a network of Shell-branded petrol stations, and in some cases has an interest in the land where the Shell petrol station is located (“**Shell Stations**”).
3. References to “**Shell**” in this Skeleton Argument should be read as a reference to the relevant Claimant(s).
4. The Claims have been consolidated and are for final injunctions to restrain unlawful protests by activists. There have been a number of interim injunctions granted in these proceedings following applications in the Claims, most recently by Hill J in an Order dated 23 May 2023 [A/78].

5. Interim injunctions were granted against Persons Unknown restraining unlawful protests at Haven and Tower on 5 May 2022 (Bennathan J). A further interim injunction was granted on 20 May 2022 in the Stations claim against Persons Unknown restraining unlawful protests by Persons Unknown at Shell petrol stations (Johnson J).
6. The background is set out in the judgment of Johnson J in *Shell v Persons Unknown* [2022] EWHC 1215 at [10] – [19] [AB/5/192-193] and in the judgment of Hill J in *Shell v Persons Unknown* [2023] EWHC 1229 at [10] – [21] [AB/6/211-213].
7. The threat which provoked the Claims in April / May 2022 and the applications for the interim injunctions was disruptive protest under the banners of Just Stop Oil, Youth Climate Swarm Movement, Extinction Rebellion and Scientist Rebellion which are associated with, and have grown out of, other climate protest movements. Johnson J described the groups at [9] [AB/5/192]:

“Insulate Britain, Just Stop Oil and Extinction Rebellion are environmental protest groups that seek to influence government policy in respect of the fossil fuel industry, so as to mitigate climate change. These groups say that they are not violent. I was not shown any evidence to suggest that they have resorted to physical violence against others. They are, however, committed to protesting in ways that are unlawful, short of physical violence to the person. Their public websites demonstrate this, with references to “civil disobedience”, “direct action”, and a willingness to risk “arrest” and “jail time”.

8. The Orders do not to stop protestors from undertaking peaceful protests whether near the Shell Sites or otherwise. The Claimants’ concern has been to enforce its property rights and mitigate health and safety and other risks posed by unlawful activities which prompted the injunctive relief. The Orders have been carefully drawn and only prohibit activity which is clearly unlawful. For example, in relation to Haven and Tower, the Orders prohibit acts constituting trespass, private nuisance and damage to private land. In relation to the Petrol Stations, the Order does not seek to prohibit protestors from entering the Petrol Stations but simply seeks to control what they do within the Petrol Stations by prohibiting a campaign of protests which is intended to harm the Claimant economically [A/4/58-68].

9. The injunctions in all three Claims were continued by Order of Hill J dated 23 May 2023 until 12 May 2024 [A/4/58-68].

B. PROGRESSION OF THE CLAIMS

Listing for final hearing

10. The Order of Hill J provided that Shell would need to apply for a review hearing in April 2024 and for the Shell to apply by 28 February 2024 for the matter to be listed if it wished for the injunctions to continue. The Application includes directions for the Claims to be listed for final hearing.
11. Shell remains very concerned that protest groups within the description of the Persons Unknown will undertake disruptive, direct action by trespass or blocking access to their sites and that a final injunction was necessary to prevent future tortious behaviour. The Claimant is in the final stages of finalising its evidence and will give full and frank disclosure in accordance with the guidance of the Supreme Court in *Wolverhampton v London Gypsies* [2023] UKSC 47; [2024] 2 WLR 45 on final injunctions against Persons Unknown.
12. As set out below, Shell has taken steps to comply with the procedural requirements in *Canada Goose* (which were recently confirmed by the Supreme Court in *Wolverhampton*) for claimants to join identifiable persons falling within the definition of Persons Unknown, to assess whether they should be joined and to offer that they enter into undertakings. It has taken longer than anticipated to do so. In the course of the proceedings, interest in the Claims has been shown by three individuals, namely, a Mr Smith who was joined as a defendant to the Tower claim on an unopposed basis (but is no longer so joined), a Ms Branch who sought permission to apply to set aside the injunctions at the hearing before Hill J and attended the hearing before Bennathan J, and a Ms Friel who attended the hearing before Johnson J).
13. However, the application for joinder is made in accordance with the procedural guidance and Shell also invites the Court to approve a timetable for the listing of a final hearing (below).

14. If the Court accedes to the application to join individuals, Shell proposes directions for the Named Defendants to file and serve defences and any evidence on which they seek to rely, as set out in the draft Order.

C. SERVICE

15. The documents in these proceedings have been served on Persons Unknown as provided for in the Orders, and most recently the Order of Hill J. In addition, the fifth witness statement of Alison Judith Oldfield explains the steps taken to serve this application upon the named individuals whom the Claimant seeks to have joined as Named Defendants together with the other steps taken to bring this application to their attention. [paragraphs 3.1-3.30 of Oldfield 5 [C/192-198]

D. APPLICATION TO ADD NAMED DEFENDANTS

16. This part of the Application relates only to the Petrol Station Claim.

Legal Principles

17. Once a claim form has been served, the court's permission is required to add a party under CPR 19.4(1).
18. The duty to join persons identified as falling within the description of Persons Unknown arises from the guidance laid down in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, §82 which must be satisfied in claims for protest injunctions against persons unknown (emphasis added)¹:

“(1) The “persons unknown” defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The “persons unknown” defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the “persons unknown”.”

¹ Although *Canada Goose* was an interim injunction case, there is no relevant jurisdictional difference between interim and final injunctions: *Wolverhampton CC v London Gypsies and Travellers* [2024] 2 WLR 45, §§139, 151, 167 and 178.

(2) The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.

(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.

(4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.

(5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.

(6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

(7) The interim injunction should have clear geographical and temporal limits.”

19. Subsequently guidance was given by the Supreme Court in *Wolverhampton City Council v London Gypsies* [2024] 2 WLR 45 in respect of final injunctions against Persons Unknown which confirmed the need to identify and join respondents to claims for final injunctions where possible:

“(3) Identification or other definition of the intended respondents to the application

221. The actual or intended respondents to the application must be defined as precisely as possible. In so far as it is possible actually to identify persons to whom the order is directed (and who will be enjoined by its terms) by name or in some other way, as Lord Sumption explained in Cameron [2019] 1 WLR 1471, the local authority ought to do so. The fact that a precautionary injunction is also sought against newcomers or other persons unknown is not of itself a justification for failing properly to identify these persons when it is possible to do so, and serving them with the proceedings and order, if necessary, by seeking an order for substituted service. It is only permissible

to seek or maintain an order directed to newcomers or other persons unknown where it is impossible to name or identify them in some other and more precise way. Even where the persons sought to be subjected to the injunction are newcomers, the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible.”

20. In practice, individuals joined as Named Defendants to the proceedings are served personally at the addresses provided by the police, or by alternative means, as necessary.
21. The correct approach to an application for joinder was considered by Freedman J *TFL v Lee* [2022] EWHC 3102, [80] (Freedman J) at [71] - [82]. At [73]-[79], it was emphasised that there needed to be a proper evidential basis for the joinder. In that case, information had been provided by the Metropolitan Police that each of the individuals who were sought to be joined had been arrested by one of their officers in the course of or as a result of relevant protests. The court expressed concerns about joining individuals based simply upon an assertion of the police where the underlying evidence had not been made available or scrutinised to check whether they had been properly named [73], [76], [77]. However, the court was satisfied that it was appropriate to join individuals where the names and addresses which had been provided had been considered against and tallied with the underlying evidence.
22. At [80] Freedman J noted that certain protections which were available to persons who were joined to proceedings on a without notice basis:

“80. There are certain protections that are available. The first protection is that the claimants have given an undertaking that, following observations on the court’s part, on Thursday, 27 October 2022, in the following terms, the claimant undertakes to scrutinise, as soon as is reasonably practicable after disclosure, the materials referred to in paragraph 10(b) of the order, in order to ascertain whether any individual whose identity has been disclosed to it, pursuant to paragraph 10(a), should properly be or remain a named defendant in this matter. It should also be drafted in a way that will seek to require that the claimant double checks that the Brompton Road matter does indeed tally and that the Westminster Bridge protest appears to have been omitted, and further evidence in relation to confirm the position about that should be provided. All of that should be in the form of undertakings to the court.

81. The other protection is that, in the event that any defendant wants to apply to discharge or vary the order, that they are able to do so. If it were the case that there had been some misunderstanding, which there does not appear to

be, but if there had been some misunderstanding then the defendants will be able to exercise that liberty to apply if, indeed, the claimant insisted that they remained within the action.”

23. At [82], Freeman J emphasised the procedural reasons for joinder:

“It is important to add the additional defendants for another reason and that is that the courts take the view that naming defendants helps to ensure fairness in the proceedings and uphold the authority of the court. That is regarded as preferable to relying solely on persons unknown, so that the defendants know that they are enjoined from acting in the way in which is set out in the injunction. Persons Unknown should be a backstop for those who really cannot be identified at the time of the court order.”

24. In such cases, it is appropriate to give persons who have been identified the opportunity to provide a suitable undertaking before applying to formally join them as defendants. Consideration was given to effect of an offer or a refusal of an undertaking (in the context of existing Named Defendants) in *National Highways Ltd v Persons Unknown* [2023] EWHC at 1073, [73], [83] – [117]. Following a review, Cotter J concluded that those persons who had refused to give an appropriate undertaking that they would not carry out prohibited activities² should continue to be Named Defendants. Conversely, he concluded that those who had given an appropriate undertaking should not continue to be Named Defendants (emphasis added):

“113. When assessing the extent of future risks posed by Defendants during the consideration or whether to grant an extension of an existing order (and/or as part of the Courts supervisory function as envisaged by the Master of the Rolls in *Barking*) the Court should offer the opportunity to Defendants to provide a suitable undertaking; after explaining what such a step means. As I indicated in Court an undertaking is a formal promise to the Court and if breached then potentially leads to the same penalties as if an order were broken; a person may be held in contempt and may be imprisoned, fined or have their assets seized. It is a serious step not to be taken lightly or without careful consideration. However if such an undertaking is accepted in circumstances such as the present by the Court then a person may be released from being a Defendant going forwards.

114. However, the Court accepting an undertaking is not part of a settlement or compromise of the claim (or any part of it). Settlements/compromises are agreements reached between the parties and a Court cannot force parties to

² The form of undertaking endorsed by Cotter J is at [117] (and it was said to be necessary for each defendant who wishes to give an undertaking to sign and file a copy).

agree. Rather it is a step that regulates the position going forwards. So in the present case if the Court were to accept an undertaking from a Defendant (something which would be recorded within the order itself) then it may order that the injunction is not continued against that Defendant but that would not affect the existing rights/liabilities of the parties given the history of the case to date e.g. any liability for costs. It also leaves open any issues as to how the costs of the review hearing should be dealt with.”

25. Conversely, in respect of those individuals who were not prepared to offer an undertaking, Cotter J felt, on the facts of that case, that the refusal to provide an undertaking pointed to there being a real and imminent risk of harm and that they should continue as Named Defendants (emphasis added):

“121. I accept Ms Stacey KC’s analysis that many individuals previously associated with/members of IB and now aligned with the JSO coalition of groups/causes still pose a real and imminent risk of serious harm through disruption of the strategic road network. Put simply “they have not gone away”; rather they are as committed to their cause as ever. The success of the order in halting protests on the strategic road network underlines the importance of continuing the protection whilst the likelihood of protest action remains and does not mean that the underlying threat were no restraint to be in place has diminished. Refusal to give an undertaking gives an insight as to future intention.”

26. It is submitted that the same reasoning applies by analogy to an application for an initial joinder, in the sense that the court can infer that a person who has been arrested for carrying out the prohibited activities and associated with the protest group in the past and who has failed and /or refused to provide an undertaking which has been offered, is someone who poses a risk of direct action protest.

Proposed joinder

27. On 13 March 2023 and a 28 April 2023 third party disclosure orders were granted requiring the Police Commissioner of Surrey Police and the Metropolitan Police Commissioner to disclose the names and addresses of individuals who had been arrested at petrol stations covered by the injunctions, with a view to enabling Shell to identify and where appropriate apply to join potential defendants to the claim.
28. The second of those orders was obtained at the hearing before Hill J and the proposed application for joinder was signposted by Shell at that hearing, as recorded at [167] – [169] of the judgment [**AB/237**]:

“166. ... there are currently no named Defendants to any of the claims.

167. However, Ms Oldfield’s evidence explains how the Claimants are keeping the issue under review. They are liaising with the relevant police forces in an effort to identify persons falling within Persons Unknown description; and comply with the undertaking to join such persons as named Defendants to the three orders as soon as reasonably practicable following the provision of their names and addresses by the police.

168. Pursuant to the third party disclosure order made by May J (see [218] below), on 29 March 2023 Surrey Police provided the Claimant in the petrol stations claim with the names and addresses of individuals arrested at Clacket Lane and Cobham motorway services on 28 April 2022 and 24 August 2022. The Claimant is liaising with Surrey Police to obtain the further information necessary to enable them to decide whether there is a proper evidential basis for applying to join any of the individuals as named Defendants, following the approach set out by Freedman J in *TfL v Lee* [2022] EWHC 3102 at [71]-[79]. A similar process is no doubt underway in relation to the Commissioner following the third party disclosure order I made on 28 April 2023.

169. Therefore, while no named Defendants have yet been identified, the Claimants are taking active steps to identify such people. On that basis I am satisfied that when people take part in protests at the relevant sites, they are, in principle, capable of being identified and that there is a process in place focussed on achieving that. Such persons can then be personally served with court documents. In the meantime, effective alternative service on the Persons Unknown Defendants can take place in a manner that can reasonably be expected to bring the proceedings to their attention, as explained under Issue (4).”

29. Shell also made clear to the Court that it intended to await the outcome of the appeal to the Supreme Court in *Wolverhampton* (then, *Barking and Dagenham LBC and others v Persons Unknown*) [2022] EWCA Civ 13, as it was expected to clarify the central question of whether final injunctions could be obtained against Persons Unknown (emphasis added):

“[161] She made clear that the Claimants intend to await the outcome of the appeal to the Supreme Court in *Barking & Dagenham*, which is expected to clarify the central issue of whether final injunctions are capable of being obtained against persons unknown or whether they can only be obtained against named individuals, before seeking a final hearing on these injunctions. Both interim and final orders must be kept under review in any event. That said, she put on record that the Claimants are mindful of their obligations to progress the litigation and intend to do so by seeking directions to bring the matter to a final hearing as soon as practical once judgment in *Barking &*

Dagenham is available. If there is a proper evidential basis to join named Defendants, that may occur, and then they can be permitted to file a Defence.”

Application for joinder

30. Since obtaining the third-party disclosure orders, Shell has taken the steps referred to below in preparation for the present application for joinder of the individuals named in Schedule 1 to the Draft Order 4 (“**Schedule 1**”) [A/16-18].
31. The evidence is set out in the Oldfield 4 at [A/24-28]. A Chronology has also been prepared by Shell’s solicitors setting out the steps taken following the third-party disclosure orders to prepare for and progress the application for joinder. That chronology is exhibited to Oldfield 5
32. As set out in the Chronology [C/201-204] those steps include:
 - a. Obtaining a list of names and addresses from the police in relation to persons arrested at Shell Stations;
 - b. Seeking additional evidence from the police to enable the Claimants to ascertain whether the names and addresses provided in respect of the arrests were properly provided and that there was a sufficient evidential basis for joinder;
 - c. Seeking details from the police regarding bail conditions which might point to there being no significant risk of recurrence of the unlawful activities by particular individuals at the Sites; and
 - d. Entering into correspondence with all of the relevant individuals offering undertakings in the form suggested by Cotter J in *National Highways v Persons Unknown* (above).
33. As a result of police disclosure, Shell has identified 30 people who were arrested for carrying out prohibited activities at the Shell Stations and thus falling within the definition of Persons Unknown. On behalf of Shell, Eversheds Sutherland (International) LLP (“**Eversheds**”) have carried out their own separate review of the evidence to confirm that the names were properly provided, that the arrests tally with the evidence and that it

would be appropriate to join those individuals (save for one individual, Xavier Gonzalez Trimmer, who is deceased) [Oldfield 4 at para 3.2.6) [A/3/25]. Details of the date, location and details of the arrests have been set out by Eversheds in Schedule 1 to the draft Order relating to this Application.

34. Eversheds have also written to each of the individuals in October and November 2023 inviting them to agree to the form of undertaking approved by Cotter J in *National Highways Ltd v Persons Unknown* (above) (Oldfield 4, para 3.2.9-3.2.11) [A/3/26]. At the date of this application 14 signed undertakings had been received from those individuals identified in yellow in Schedule 1. A further undertaking was received from Stephen Gingell after the application was issued and served; Oldfield 5 paragraph 4[C/ 198 and C/ 313]
35. Of the remaining 14 individuals:
 - a. One individual, Ms Ireland, has stated [A/4107]:

“Thank you for asking whether I ‘consent to being named as a defendant to these proceedings’. My response is that I do not consent to this. Thank you for asking me to consider signing an undertaking. I have decided not to sign the undertaking. For clarity, my not signing the undertaking is done with out any admission of civil or criminal liability.”
 - b. The others have not responded.
36. It is submitted that it would be appropriate to join those individuals who have not provided undertakings for the following reasons:
 - a. Such joinder would accord with the *Canada Goose* and *Wolverhampton* guidance, referred to above.
 - b. The individuals have all been identified pursuant to the third-party disclosure orders and following the provision of information by the police which confirms that each of them was arrested by one of their officers in the course of or as a result of protests at the Petrol Stations in association with protest campaigns.

- c. Shell does not simply rely on the names and addresses provided by the police. Rather, it has carried out a careful review of the evidence through its solicitors to ensure that the names and addresses provided tally with the underlying evidence. That assessment was carried out to ensure that the persons whose names and addresses had been provided had indeed carried prohibited acts and could be said to pose a threat of unlawful activity at the Sites [Oldfield 4, para 3.2.5 [A/3/24]; And the Chronology exhibited at AJO5 to Oldfield 5 [C/ 314-343]. Schedule 1 sets out details of the arrests and the dates and locations which have been compiled by Eversheds from the underlying police evidence.
- d. The history of invasive and dangerous protests at the Shell Stations as described in the judgment of Hill J at [18]-[21] [AB/6/212-213] is compelling. Joinder is justified in circumstances where no undertaking has been provided despite requests and the nature of the activities for which the individuals were arrested. That evidence enables the court to make the same findings as regards those individuals as Hill J made at [146]-[149] [AB/6/234] of her judgment in relation to risk as regards those persons i.e. that there continues to be a real and imminent risk and the harm that might eventuate is sufficiently “grave and irreparable” that damages would not be an adequate remedy: *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456; Paragraphs 5.1-5.5 of Oldfield 5 [C/198-199]
- e. Joinder of those additional defendants on a without notice basis, followed by service on such individuals, would be entirely consistent with the way in which defendants have been added as named parties in other protest injunction cases which were originally against Persons Unknown: *Tfl v Lee* at [78]. The draft Order provide for all such persons to be served personally after they have been joined.
- f. The Application and draft Order and supporting evidence have already been pre-emptively served on the Named Defendants personally at their last known addresses; Paragraphs 3.1-3.30 of Oldfield 5 [C/192-198]
- g. As emphasised by Freeman J in *Tfl v Lee*, joinder would ensure fairness in enabling those Named Defendants to participate individually by filing defences if they wish to do so.

- h. Further protections described in *TfL v Lee* at [80] are equally present here. First, Shell is mindful of its continuing duty to assess the level of threat posed by the Defendants and consider whether discretionary interim relief granted by the Court remains appropriate. Pursuant to this duty, Shell is prepared to include in the draft Order an undertaking that it would seek the Court's permission to discontinue the Petrol Stations Claim against any of the Named Defendants if undertakings are subsequently given or against any Named Defendants who are not considered to pose a threat of direct action. Second, the draft Order provides for any defendant who wishes to apply and discharge the order to do so. To the extent that the current draft Order does not do so sufficiently, Shell would be content for the draft to be varied to ensure such protection is included.
37. The process of assembling and considering the underlying evidence from the police and assessing whether joinder could be justified on the basis of that evidence and then seeking to engage with the individuals regarding the giving of undertakings, has taken longer than anticipated. Shell also considered it sensible to await the Supreme Court's decision in *Wolverhampton* before progressing the claim for a final injunction in circumstances where the question under appeal (whether final injunctions could be obtained against newcomers) was central to the Claims. Judgment was not given in *Wolverhampton* until 29 November 2023.
38. It is submitted that the fact that matters have taken longer to progress than anticipated ought not preclude the Court from granting the Order sought at this stage. No prejudice or unfairness has been caused to any individuals who are sought to be named given that:
- (1) Each of them was arrested at the Shell Stations in connection with the environmental protests. They can, therefore, be taken to be aware of the reason why they are being joined.
 - (2) The proceedings and previous Orders have been served on Persons Unknown which includes sending copy documents to the list of email addresses associated with the protest groups (and affixing copies of the Orders at Shell Stations) (see Oldfield 5 3.15 -3.24; [C/195-197]). It is unlikely that they would be unaware that injunctive relief has been granted by the court in relation to protests in which they participated.

- (3) Shell, via their solicitors, wrote to each of the individuals explaining the reason for joinder and provided them with an opportunity to provide a suitable undertaking before applying to formally join them as defendants.
- (4) They have also been pre-emptively served with the Application and accompanying documents as set out in Oldfield 5 (and accompanying schedule) ; Oldfield 5 paragraphs 3.1-3.30 [C/192-198]and will be served personally if and when they are joined.
- (5) The draft directions provide the protections referred to at paragraph 36(h) above, as well as for such persons to file defences, should they wish to do so.

Position if no Named Defendants are joined

39. If the Court is not prepared to join any individuals as Named Defendants, the Third Claimant would nevertheless wish to proceed with its claim for final injunctions against Persons Unknown (including newcomers) in respect of the Claims, in view of the ongoing risk which justifies a continuation of the existing relief. In that event, the Court is invited to consider a modified set of directions to reflect the fact that all three Claims would proceed against Persons Unknown in that scenario (see below).

E. ALTERNATIVE SERVICE

40. The alternative methods of service which have been already endorsed by the Court in relation to Persons Unknown (as set out in the Order of Hill J) remain applicable and the Court is invited to expressly continue such methods (draft Order para 17) [A/2/14].
41. If the Court is prepared to order the joinder of the Named Defendants to the Stations Claim, the documents would be served personally on such individuals by posting copy documents to their last known address (being the address supplied by the relevant police authority) pursuant to CPR r.6.9. The draft Order provides for that.
42. In addition, (on a 'belt and braces' basis) a further method of alternative service is sought in respect of 3 individuals: Tessa-Marie Burns, Louise Harris and Samuel Holland. The

reasons for such alternative service are set out at paras 5.4 to 5.14 of Oldfield 4 [A/3/28-31]. In short, Shell has been provided with addresses for all three by the police. Those addresses are assumed to be their “usual or last known address” for the purposes of CPR r. 6.9. However, no definitive proof of delivery was received when the undertaking letters were sent to the addresses for Ms Burns and Ms Harris (see Oldfield 4 at para 3.2.20 [A/3/27]) and it has come to Shell’s attention that Samuel Holland no longer resides at the address which was provided (it is student accommodation) (see Oldfield 5 at para 3.10 [C/193])

43. In relation to the first two individuals, in order to maximise the prospect of the documents coming to their attention, Shell has obtained a social media account for each of them and its solicitors have managed to upload a message to each account which has been identified for those two individuals, containing a link to the Claimant’s website (<http://www.noticespublic.com/>) on which the Application Documents will have been previously uploaded and specifically noting that copies of the Application Documents are accessible via that website (Oldfield 4 at para 5.8) [A/30]; [Oldfield 5 paras 3.11-3.13 [C/193-195]. The draft Order therefore contains provision for that alternative method of service in addition to personal service under CPR r. 6.9 and the existing methods of alternative service set out in the Order of Hill J (which would continue as set out above).
44. In relation to Samuel Holland, no social media account has been identified.

F. DIRECTIONS

45. A summary explanation of the proposed directions is set out in Oldfield 4 at paras 6.4 – 6.13 [A/3/31-34].
46. Shell’s primary objective has been to ensure that it complies with the procedural requirements in terms of identifying individuals and joinder, whilst simultaneously ensuring that the matter is capable of being listed before the expiry date of 12 May 2024. As set out above, that process and the judgment in *Wolverhampton* took longer than expected.
47. Although time is now tight, Shell respectfully invites the Court to give directions with a view to listing the matters for a final hearing before the expiry date on 12 May 2024

directions. When considering the proposed directions, the Court should keep in mind the nature these types of proceedings (where, as the Supreme Court in *Wolverhampton* put it, there would scarcely ever be a “trial”, as such, and the scope of adversarial argument is narrow [137] [AB/1/48]).

Directions following joinder

48. In the event that the Court is prepared to add the Named Defendants, Court is invited to consider the proposed directions in the draft Order [A/2] the key provisions of which are summarised (with dates) below:
- a. Provision for alternative service on 2 Named Defendants as explained above (paras 3 - 5)
 - b. Para 6 (Acknowledgement of Service) = **2 April 2024**
 - c. Para 7 (Defence) = **16 April 2024**
 - d. Para 9 (C’s witness evidence) = **19 April 2024** (although Shell is in a position to file its evidence within days, and can therefore do so sooner)
 - e. Para 10 (D’s witness evidence) = **3 May 2024** (given the nature of the proceedings this step is likely to be superfluous but it has been included for completeness)
 - f. Listing of the final hearing **prior to 12 May 2024.**
 - g. Provision for interested parties to apply to be heard (as per Hill J’s Order at para 16 [A/4/62]).
49. Although not included in the current draft Order, Shell suggests that the following additional provisions should form part of any such directions:
- a. In line with its ongoing obligations to the Court, an undertaking by Shell that it would discontinue the Petrol Stations Claim against any of the Named Defendants (and would seek the Court’s permission to do so) if undertakings are subsequently given or any Named Defendants are subsequently considered to no longer pose a threat of direct action in light of any new materials.
 - b. A general provision for liberty for any defendant who wishes to apply and discharge the order to do so (as set out in previous orders) (see para 17 of Hill J’s Order [A/4/62]).

50. Shell does not intend to apply for summary judgment, in circumstances where that step would not result in an earlier hearing or save costs at this stage.

Modified directions if no Named Defendants

51. If the Court is not prepared to add any Named Defendants, Shell would need to proceed against Persons Unknown (and there is no jurisdictional impediment to it doing so following the decision of the Supreme Court in *Wolverhampton*).
52. Consequently, the Court is therefore invited to consider a more streamlined set of directions to accommodate that, which would include:
- a. Provision for Shell to file and serve updating evidence (para 9 of the draft Order). As set out above, Shell's evidence is practically finalised and will be ready to be filed and served imminently.
 - b. Provision for the Claims to be listed for a final hearing following the service of such evidence (para 11 of the draft Order).
 - c. Provision for interested persons to apply to be heard (a modified version of para 16 of the draft Order) (as per Hill J's Order at para 16 [A/4/62]).
 - d. Provision for the continuation of the service provisions (para 17 of the draft Order).

G. CONCLUSION

53. For the reasons set out above, Shell invites the Court to grant the Orders sought and make the directions in accordance with the draft Order, or such other directions as the Court thinks fit.

MYRIAM STACEY KC
LANDMARK CHAMBERS
7 March 2024