

ATTENDANCE NOTE

High Court of Justice

Queen's Bench Division

Claim No. QB-2022-001420

Shell U.K. Oil Products Limited (“Claimant”) -v- Persons Unknown (“Respondents”)

Hearing (in person) before Hon Mrs Justice McGowan

ATTENDEES

- 1). Mrs Justice McGowan (the “**Judge**”)
- 2). Lynn Bilbe – Court Clerk
- 3). Toby Watkin QC of Landmark Chambers, representing the Claimant (“**TWQC**”)
- 4). Natasha McCarthy, Lara Nicholls and Poppy Watson of the Claimant
- 5). Emma Pinkerton, Emily Newey, Ellen Bandarian and Rebecca Phipps of CMS, the Claimant's Solicitors

1. INTRODUCTION AND FACTUAL BACKGROUND

- 1.1 TWQC explained that he represented the Claimant, who was making a precautionary, without notice application against the Respondents for an interim injunction. The basis for the claim is the tort of unlawful means conspiracy, and in particular the Claimant is seeking an injunction to restrain conspiracy by persons unknown to injure the Claimant by unlawful means.
- 1.2 The Judge confirmed that she had read the documents listed in TWQC's skeleton argument and had skimmed the exhibits. The Judge also noted, out of an abundance of caution, that she was sometimes a customer of the Claimant.
- 1.3 As an initial matter, TWQC clarified the number of petrol stations in respect of which the injunction was sought – 1062 service stations are referred to in the claim documentation, however, the correct figure is 1065. It was noted that this correction did not affect the nature or form of the relief sought, as the injunction is directed at all service stations bearing the Claimant's branding in England and Wales.
- 1.4 TWQC explained that the Claimant's application was brought owing to protests that had taken place on 28 April 2022 at two petrol stations on the M25 (one of which was a Shell branded petrol station) and that these events have received widespread media coverage. It was noted that the group responsible for these particular protests (Just Stop Oil), has itself described the events which took place as “*sabotage*” in various video footage clips and press releases.
- 1.5 The Judge confirmed that she had not seen those video clips, but that she had seen the Surrey Police Report exhibited to the Witness Statement of Benjamin Austin together with other information regarding the nature of the protests.
- 1.6 TWQC confirmed that even if the Judge had not seen the video clips themselves, narrative from the videos was quoted in the Witness Statement of Benjamin Austin [**Hearing Bundle**,

p43]. Whilst it was not clear from the evidence exactly how long the protests in question had lasted, some of the video footage stated that the petrol stations had been blocked by protesters for a period of at least 4 hours by the time the video footage was taken. Ultimately, however, the duration of the protests was a secondary issue, because the damage caused to the stations by the protest meant they were inoperable for a longer period.

- 1.7 TWQC explained that the reason why the basis of the Claimant's claim was the tort of unlawful means conspiracy and not (for example) in trespass, was because the injunction, if granted, seeks to protect all of the Claimant's branded petrol stations across England and Wales from future acts of sabotage committed by protesters and, whilst the Claimant has a proprietary interest in some of its branded petrol stations across England and Wales, it does not have a proprietary interest in all of them. An injunction which covers all of the Claimant's branded petrol stations is necessary and appropriate as the actions of the protesters are directed against the Claimant's group, with the intent of harming the Claimant's interests by preventing distribution of its fuel products.
- 1.8 TWQC noted that although the acts which immediately precipitated the present application were the two recent attacks at the M25 petrol stations, there was also reference in the Witness Statement of Benjamin Austin to [**Hearing Bundle, p45**]: (i) a wider threat to the Claimant group's installations around the country from the Defendants; and (ii) the Claimant's property having been damaged in other locations, such as at the Kingsbury Terminal in Tamworth and the Shell Centre in London. The activities of protesters at other sites have included tampering with safety equipment and damaging roads and, on 28 April 2022, the sabotage at the Claimant's branded petrol stations has involved, amongst other things, damaging fuel pumps with hammers.
- 1.9 TWQC explained that, although the basis of the Claimant's cause of action was the potential injury to its interests, the health and safety issues which arise because of the action taken by the recent protesters are incredibly serious. TWQC explained that the Claimant has very real underlying concerns about what could happen if the protests continue in the same way. Not only is there the matter of the public being hindered from receiving fuel from the Claimant's branded petrol stations, but there is also the serious health and safety risk which both the public and staff are exposed to because of the Defendants' activities, and which they are threatening to continue.
- 1.10 TWQC referred to paragraph 7.2 of the Witness Statement of Benjamin Austin [**Hearing Bundle, p37**], which flags that one of the Defendant groups (Just Stop Oil) has confirmed that it intends to continue its disruption until such time as the UK Government ends new oil and gas projects in the UK. Accordingly, there is a clear intent by the Defendants to further injure the Claimant with unlawful action.
- 1.11 In connection with the underlying risk that arises because of the Defendants' activities and specifically, in relation to the events that occurred on 28 April 2022, TWQC also drew the Court's attention to the fact that the Claimant's petrol stations are regulated spaces.
- 1.12 TWQC submitted that: (i) the protests are taking place in closely regulated 'zoned areas', where it is entirely possible that fuel vapour is in the air with the potential to ignite; and (ii) there is, for example, a requirement that mobile phones should not be used on a petrol

forecourt. Reference in this regard was made to [**Hearing Bundle, p54**], which exhibits a HSE guidance document under the title “*Dispensing Fuel Safely*”. In particular, the requirement that “*no one uses portable electric/ electronic equipment such as a CB radio or portable telephone*”. TWQC submitted that it is clear that the protests have involved use of electronic equipment, as the protesters have been filming themselves, and that this itself demonstrates a lack of regard on the part of the protesters for health and safety.

- 1.13 TWQC said that the threats posed by the Defendants’ ongoing activities in the vicinity of petrol / petrol substances are not theoretical. He pointed to Mr Austin’s evidence of an incident where people were killed because of an incident involving petrol ignition in Pakistan. Finally, on the issue of health and safety, TWQC drew the Court’s attention to: (i) the fact that recent protesters have been using spray paint, which can itself also be highly flammable (although TWQC noted that the Claimant was not aware what type of paint was used as part of the incident on 28 April 2022); and (ii) there is the potential for confrontation with motorists, and that the evidence in connection with the recent activity at the Claimant’s petrol stations had raised this issue.
- 1.14 By virtue of the above, TWQC confirmed that the Claimant had no optimism at all that the current wave of protesting would cease or that it would be carried out more safely in the future.

2. LEGAL TESTS TO BE SATISFIED

- 2.1 Having explained the factual background against which the Claimant’s application was brought, TWQC turned to the legal tests which must be satisfied to successfully obtain the interim injunction sought.
- 2.2 First, and with reference to the *American Cyanamid* principles [**Claimant’s Skeleton Argument, Paragraph 8**], TWQC noted that the Court must consider if there is a ‘serious issue to be tried’. It was said on behalf of the Claimant that in fact there is a “strong case” in favour of the Court granting an interim injunction on the terms in the draft order [**Hearing Bundle, p17**].
- 2.3 The Claimant’s case being founded upon the tort of conspiracy to injure by unlawful means, TWQC referred to the elements of that tort as set out in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 [**Claimant’s Skeleton Argument, Paragraph 9**]/ [**Authorities Bundle, p268**], as being:
- 2.3.1 An unlawful act by the defendant;
 - 2.3.2 Done with the intention of injuring the claimant;
 - 2.3.3 Pursuant to an agreement (whether express or tacit) with one or more other persons; and
 - 2.3.4 Which actually does injure the claimant.

An unlawful act by the defendant

- 2.4 Regarding an unlawful act by the defendant, TWQC explained that there had been some legal controversy as to whether a relevant ‘unlawful act’ could include a civil wrong which was actionable only by a third party. TWQC explained that in *Revenue & Customs Commissioners v. Total Network SL* [2008] 1 AC 1174 the Supreme Court had identified that a crime directed

at the claimant, but not actionable in tort, was sufficient but that in *JST BTA Bank v. Ablyaszov (No. 14) [2020] AC 727* the Supreme Court had left open whether unlawful acts which only gave rise to a civil action by a third party was enough. TWQC submitted that this issue had been resolved in *Racing Partnership Ltd v Done Bros (Cash Betting) Ltd [2021] Ch.233 [Authorities Bundle, p289]*.

- 2.5 TWQC drew the Court's attention to the fact that the unlawful act under consideration in *Racing Partnership* was a breach of contract actionable by a third party not, and not (as was the case in the present proceedings) a tort. TWQC emphasised that he was drawing this potential point of distinction between *Racing Partnership* and the recent case because there was no represented defendant or respondent to the claim and application. [**Claimant's Skeleton Argument, Paragraph 14**].
- 2.6 However, TWQC submitted that there was no logical basis for a difference in approach between unlawful acts which were actionable only by third parties in contract or in tort. He submitted that the decision in *Racing Partnership* could and should be applied here. [**Claimant's Skeleton Argument, Paragraph 13, 14 and 15**].
- 2.7 TWQC referred the Court to paragraph 155 of *Racing Partnership* [**Authorities Bundle, p334**]. TWQC explained that the central issue was whether the unlawful acts were directed at the claimant, and were the instrument of the conspiracy, or whether they just provided a context in which the claimant was harmed.
- 2.8 TWQC submitted that there is a strong case in the present proceedings: TWQC submitted that the law is now clear and that if the activities which the injunction is designed to restrain occur, these would give rise to the cause of action that is sought.

Done with intent to injure

- 2.9 TWQC explained that the intent to injure does not need to be the dominant purpose of the Defendants' activity, but the activity does need to be carried out with an intention to injure. TWQC submitted that the fact that the Defendants are actively intending to disrupt the Claimant's supply of fuel is sufficient in this case.

Agreement express or tacit

- 2.10 TWQC submitted that it was clear from the evidence that the protests amount to a movement by people (the Defendants) who are acting in concert, and that this is what the injunction seeks to restrain.

Actually injures the Claimant

- 2.11 TWQC explained that as the Claimant is seeking a pre-emptory injunction, the 'qua timet' test applies, i.e., is there a real risk that the Claimant's rights will be invaded and, if so, that the consequences would be sufficiently grave and incapable of adequate compensation in damages, that a pre-emptory injunction is justified. TWQC submitted that there was clearly a real risk, and this limb was satisfied, and further that the gravity of the consequences alone to the Claimant arising as a result of the Defendants' actions are serious enough to justify the injunction.

Are damages an adequate remedy

2.12 TWQC then addressed the Court as to the next element of the *American Cyanamid* test: i.e., whether damages would be an adequate remedy. It was submitted that in this case, there cannot be any doubt that damages would not be an adequate remedy, not least because the financial resources of those protesting are likely to be insufficient to meet any damages claim.

Claims against persons unknown – The Canada Goose Guidance

2.13 TWQC then addressed the Court on the guidance laid down in *Canada Goose UK Retail Ltd v PU* [2020] 1 WLR 2802 [**Authorities Bundle, p212**] in respect of a claim made against persons unknown [**Claimant’s Skeleton Argument, Paragraph 27**]. With reference to paragraph 82 of *Canada Goose* [**Authorities Bundle, p233**], TWQC read the following passage to the Court:

“(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””.

2.14 TWQC referred to [**Claimant’s Skeleton Argument, Paragraph 30**], which notes that the Claimant has identified the names of some persons involved in the protests, but that four of those identified are already subject to bail conditions which prevent the individuals from entering petrol stations across England and Wales, and that the nature of the involvement of the fifth person identified is unclear.

2.15 The Judge asked whether the Claimant’s had thought about what action they would take in the event that the bail conditions were dropped and/or discontinued. TWQC confirmed that the Claimant would be obliged to consider joining them as individuals to these proceedings in these circumstances.

2.16 Turning to the second point raised by *Canada Goose*, TWQC quoted as follows: *“The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful”* [**Authorities Bundle, p234**]. The way in which the Defendants have been framed in this case is *“Persons Unknown damaging, and/or blocking the use of or access to any Shell Petrol Station in England and Wales, or to any equipment or infrastructure upon it, by express or implied agreement with others, in connection with environmental protest campaigns with the intention of disrupting the sale or supply of fuel to or from the said station”*. This definition includes all of the components for the tort of unlawful means conspiracy.

2.17 On the third point in *Canada Goose*, TWQC said it had been dealt with by his submissions already. Injunctive relief can only be granted if there is a sufficiently real and imminent risk of the tort occurring. It was submitted that there is a real and imminent risk against the facts

as described and that it is not precipitant for the claimant to apply for injunctive relief now because there is a real and imminent risk.

- 2.18 On the fourth point in *Canada Goose*, TWQC noted that 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*”. In this respect, TWQC took the Court to the relevant terms of the proposed order and submitted that this requirement is satisfied (see section 5 of this note).
- 2.19 On the fifth point from *Canada Goose*, “*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.*” TWQC said that the acts do – the terms of the proposed injunction tracks the elements of the tort very carefully, and the prohibited acts correspond with the threats posed. There is also no other means of protecting the Claimant’s rights.
- 2.20 On the sixth point from *Canada Goose*:
- “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.”*
- 2.21 TWQC submitted that in this case the terms of the injunction are sufficiently clear and precise, and the language of the order is such that the Defendants can easily understand, and it is obvious to anyone reading it, what they can and cannot do. TWQC submitted, that given the tort involved intention, it was not possible to frame the injunction other than by reference to intention, but that the terms were nevertheless clear and precise.
- 2.22 On the seventh point from *Canada Goose*, there should be clear geographical and temporal limits. On this, TWQC noted that the Claimant seeks an interim and not a final injunction, so that the temporal limits will be defined by the injunction. In relation to the geographical limits TWQC submitted that the nature of petrol stations was such that the terms of the order and their scope was sufficiently geographically defined, in that (for example) their entrances will be obvious, so that it is clear what is and is not within it. TWQC noted that the exact legal boundaries are not so relevant given the terms of the injunction sought, for example, since the claim is not brought in trespass it was not necessary for the exact legal boundaries of the petrol stations to be defined by the order.
- 3. ARTICLE 10 AND 11 RIGHTS**
- 3.1 In respect of whether there is a serious issue to be tried, and in respect of the Court’s ability to exercise its general discretion, TWQC noted that appropriate weight had been given to the

protesters' qualified rights under Article 10 (freedom of expression), and Article 11 (freedom of assembly) under the Convention [**Claimant's Skeleton Argument, p9**].

3.2 TWQC noted that protest, even where it disrupts the activities of another, can still fall within Articles 10 and 11. However, the Courts have also recognised that “*deliberately disrupting traffic or seriously disrupting the activities of others is not at the core of these Convention Rights*”.

3.3 TWQC drew the Court's attention to the statements that Articles 10 and 11 do not, bestow “*freedom of forum*” nor any right to trespass on private property (as per the UK Court of Appeal in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 [**Authorities Bundle, p175**]). TWQC submitted that it was equally and obviously clear that Articles 10 and 11 did not include any ancillary right to damage private property or to injure others.

3.4 TWQC confirmed to the Court that all of the Defendants' activities on 28 April 2022 would in fact involve trespass to land, except for the unlawful act of blocking access to fuel stations, which, if it occurred on the highway, would only involve a nuisance (both public and private).

3.5 TWQC noted that there was a balance to be struck between the Defendants' and the Claimant's rights, and that this had been addressed in the Claimant's Skeleton Argument, with particular reference made to the analysis of Lavender J in *National Highways Ltd v PU* [2021] EWHC 3081 [**Authorities Bundle, p359**]. TWQC invited the Court to adopt essentially the same approach, but noted, in the present proceedings, that:

3.5.1 The terms of the proposed injunction prevent only the tort of conspiracy to injure – they do not simply restrain nuisance. The Claimant is therefore seeking to restrain acts actively intended to injure the Claimant, which was not the case in *National Highways*.

3.5.2 Unlike *National Highways*, the protests thus far carried out by the protesters have not been peaceful – they have involved violence to property.

3.6 Accordingly, TWQC submitted that the balance between the Claimant's rights and the Article 10 and 11 rights of the protesters came down squarely in favour of granting the injunction.

4. THE HUMAN RIGHTS ACT

4.1 TWQC drew the Court's attention to Section 12(2) as quoted in *Ineos Upstream v PU* [2017] EWHC 2945 [**Authorities Bundle, p128**], namely:

“If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent;

or

(b) that there are compelling reasons why the respondent should not be notified”.

4.2 TWQC submitted [**Claimant's Skeleton Argument, Paragraph 57**], that both qualifications above are satisfied in the present proceedings. In respect of:

- 4.2.1 Reasonable/ practical steps: until someone breaches the Court’s order, no specific individual can in fact be served since no individual is a party to the proceedings. Accordingly, there are no further steps that can be taken in this regard, and this requirement is satisfied;
- 4.2.2 However, in addition, if the protesters were notified of this application being sought, there was a risk that they would seek to take action before the application was made and the relevant protection afforded – a risk noted by Morgan J in *Ineos*.
- 4.3 In relation to Section 12(3) TWQC referred to his skeleton and the controversy about the meaning and effect of this section [**Claimant’s Skeleton Argument, Paragraph 65**]. TWQC explained that in *Ineos* Morgan J had held that this provision applied to protests, and that this had been assumed in some other cases, but that Lavender J had held in *National Highways* that it did not. Morgan J had also held that “likely” meant “more likely and not”. TWQC submitted that Morgan J had misinterpreted Lord Nicholls judgment in *Cream Holdings v Banerjee* [2005] 1 AC 253 [**Authorities Bundle, p3**] in this regard.
- 4.4 As to whether there was a ‘publication’, TWQC noted that the origin of this provision was the importance of protecting ‘publications’ made by the press, although its scope was wider than that. However, TWQC submitted that seeking publicity by undertaking a protest is not per se an act of publication: a ‘publication’ is something that is ‘published’, and whilst a person who undertakes a protest may well be doing so to ‘publicise’ a particular cause or view, that view or cause is not ‘published’ as a result.
- 4.5 The Judge commented that she did not consider that the fact that an activity, i.e., gluing oneself to a tank, would attract publicity, is not what was anticipated by Section 12(3). The Judge recognised that the Defendants may want publicity for their acts, but this was not the same thing as envisaged by Section 12(3).
- 4.6 TWQC explained, however, that the relevance of Section 12(3) was that, if it did apply, then rather than concluding that there was a ‘serious issue to be tried’ the Court had to conclude that it was ‘likely’ that the relief sought on an interim basis would also be granted at the final hearing. TWQC said that the controversies about the meaning and application of Section 12(3) were academic here because, even if it applied and even if “likely” means “more likely than not”, those thresholds were still satisfied here.
- 4.7 Finally, (prior to addressing the terms of the draft order below), TWQC raised with the Court two issues which were potentially relevant to the Court’s balancing exercise and the proportionality of granting an injunction which potentially interfered with Article 10 and 11 rights, and which (in the absence of any representation for the Defendants/Respondents) it was appropriate to draw to the Courts’ attention , namely: (i) that the Claimant recognises that there is no doubt about the sincerity of the beliefs which have led to protesters to behave in the way that they have; that (ii) many may agree with what the protesters are trying to achieve by their protests; and (iii) it might be argued that there are alternative steps which could be taken to protect the Claimant, such as the exercise of powers by the police or local authorities.
- 4.8 However, TWQC noted that the police have not in fact prevented the protesters’ acts from harming the Claimant thus far. The Judge agreed and noted that the Police do not have

capacity to have a Police presence on all petrol station forecourts across the country to stop such activity harming the Claimant and risking others.

5. TERMS OF THE INJUNCTION AND SERVICE

5.1 TWQC explained each of the paragraphs in the draft order to the Judge [**Hearing Bundle, p17**]. In particular:

5.1.1 TWQC referred to the penal notice and said that in the context of this application such a notice was obviously appropriate.

5.1.2 Paragraph 2: “Until trial or further order, the Defendants must not do any of the acts listed in paragraph 3 of this order in express or implied agreement with any other person, and with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station.” TWQC paused here to observe that, because of the terms of paragraph 2, the injunction sought by the Claimant is only directed at inherently unlawful behaviour intended to harm the Claimant.

5.1.3 Paragraph 3 sets out the acts which are restrained if done as a conspiracy to injure the Claimant, all of which would themselves be unlawful. In particular, TWQC observed that:

- Paragraph 3.3 relates to the ‘kill switches’ or ‘fireman’s switches’ that are designed to allow all operations in a petrol station to be shut down. It was said that there have been incidents in the past whereby people have interfered with those switches, both to shut down the station and to disable them (so that the station could not operate).
- Paragraph 3.4, responded to incidents where protesters have sought to chain/ glue themselves to objects/ infrastructure and to each other;
- Paragraph 3.5, relates to action which has not yet occurred at petrol stations, but has been happening in the course of other disruptive protests at oil installations; and
- Paragraph 3.6 responds to the evidence of spray paint being applied over the petrol pumps.

5.1.4 Paragraphs 5 and 6 deal with the ability of any party to apply to discharge the injunction. The Claimant submits that 24 hours’ notice is an appropriate time frame for notice to be given by someone seeking to discharge the injunction.

5.1.5 Paragraph 7 allows the Claimant to seek a variation to the order to respond to future circumstances, and paragraph 8 deals with the return date.

5.2 The Judge queried what sort of period was the Claimant looking at in terms of a return date.

5.3 TWQC confirmed that the Claimant anticipated a week but was in the Court’s hands.

5.4 TWQC addressed the Court as to the terms of paragraph 9, which deals with service of any order made by the Court. TWQC explained that service in accordance with the usual CPR rules is not possible on persons unknown, and therefore it is proposed that:

“9. Pursuant to CPR 6.15 and 6.27 service of this Order and of the Claim Documents shall be effected upon the Defendants as follows:

9.1. The Claimant shall use all reasonable endeavours to arrange to affix:

9.1.1. at each entrance of each Shell Petrol Station;

9.1.2. on every upright steel structure forming part of the canopy infrastructure under which the fuel pumps are located within each Shell Petrol Station forecourt; and

9.1.3. and at the entry door to every retail establishment within any Shell Petrol Station

warning notices, no smaller than A4 in size.”

5.5 TWQC explained that there would be a warning notice, in the form included in the hearing bundle [**Hearing Bundle, p36**], displayed at all Shell branded petrol stations in England and Wales. He pointed out that the notice would inform the reader:

5.5.1 That the injunction applies to all Shell Petrol Stations;

5.5.2 Of the conduct deemed to be unlawful;

5.5.3 Of the consequences of breaching the Court’s order; and

5.5.4 Where copies of the Court’s order and Court documents could be obtained.

5.6 The Judge confirmed that she had seen the proposed warning notice.

5.7 Further, TWQC confirmed:

5.7.1 As per paragraph 9.3 of the draft order, that the Claimant would upload to the Claimant’s website, copies of any order made by the Court and the relevant court documents;

5.7.2 As per paragraph 9.4 of the draft order, that the Claimant would upload to a designated URL, copies of any order made by the Court and the relevant court documents; and

5.7.3 As per paragraph 9.5 of the draft order, that the Claimant would send copies of any Order made by the Court and the relevant court documents to the email addresses attached as schedule 3 to the draft order.

5.8 TWQC drew the Judge’s attention to paragraph 10 of the draft order, and the provision that service of the proceedings would be deemed effective when notices had been displayed at more than half of the Shell branded petrol stations in England and Wales. TWQC stated that the Claimant directly controls only just over half of its petrol stations in England and Wales. The Judge noted, from the Witness Statement of Benjamin Austin, that the Claimant has varying levels of control over the remainder of its petrol stations owing to the ownership structures adopted. TWQC stated that Shell was not in a position to compel the putting up of

notices on all of its branded petrol stations and that, although it anticipated, compliance, it could not guarantee that every one of the Stations would comply. However, TWQC explained that if the threshold for good service was reached there would be notices on more than 500 of the Claimant's petrol stations. TWQC invited the Court to consider the definition of the Defendants and the terms of the injunction – these proceedings were necessarily limited to those who were actively conspiring to injure the Claimant. In that context, TWQC submitted that it was inconceivable that the existence of the proceedings, and the order, would not come to the attention of anyone bringing themselves within the definition of 'the Defendants', by conspiring to injure the Claimant by attacking Shell Petrol Stations, if more than half of all Shell Petrol Stations in the Country were displaying a notice which explained that all such petrol stations in England and Wales were protected.

- 5.9 Accordingly, TWQC submitted that the service methods proposed could reasonably be anticipated to bring the existence of the proceedings to the attention of those who might bring themselves within the class of the Defendants and the scope of the order, and so it was appropriate to constitute those steps as good service.
- 5.10 For completeness, TWQC also referred to two additional methods of service which the Claimant had considered but discounted, namely:
- 5.10.1 Placing a notice in the newspaper: TWQC submitted on behalf of the Claimant that the idea of such service being an effective means of alerting people to the existence of the proceedings was now somewhat old fashioned. Although it could be done, the Claimant had concluded that it would not be of real assistance.
- 5.10.2 Social Media: TWQC submitted that the Claimant had two reservations about proposing service by posting on (for example) the protesters' social media feeds. First, the Claimant would not be able to control how long any post was visible – if posted on Just Stop Oil's feed, for example, they could just delete it. So it was not a means of service which was really under the Claimant's control. Secondly, the Claimant was concerned that posting onto (for example) a social media feed of Just Stop Oil would lead others to use that feed to incite people to breach the order.
- 5.11 In respect of paragraph 11, TWQC noted that it states:

“Service of any further document in these proceedings upon the Defendants (other than any Defendant who is subsequently named in these proceedings) shall be validly effected by:

- (i) sending it by email to each of the email addresses listed in the Third Schedule to the Order;*
- (ii) uploading it to the Claim Documents URL website; and*
- (iii) sending a copy to any person who has previously requested a copy of the Claim Documents from the Claimant or its solicitors, either by post or email (as was requested by that person).*

Such service shall be deemed effective on the latest date on which all of the said steps shall have been completed.”

6. JUDGEMENT

- 6.1 This is an application for an injunction which is sought to prevent unlawful action which is clearly in the contemplation of some, if not all, involved in these groups (this is a term I use very loosely).
- 6.2 What is sought here is an interim injunction to deter conspiracy to cause injury by unlawful means. It seems to me that Shell, in the broadest sense, are acting in relation to the petrol stations that it owns and manages and to protect its economic interest in those that trade under the Shell logo. The Claimants do have a cause of action and the activities that are feared by them, would give rise to that cause of action.
- 6.3 The activities in contemplation here would, and could only, be carried out with the intention of damaging Shell's economic interests. There is a strong case that a final injunction would/ will be granted at a final hearing.
- 6.4 The fear (if that is the right word), which gives rise to this application is based directly on acts at two stations in the recent past on the M25.
- 6.5 There is, as I see it, a risk of damage physically at those sites. There is a risk of economic loss to Shell, those who trade through Shell and inconvenience to the public. However, my greatest immediate concern is the real risk of serious injury to staff, emergency workers, those who carry out activities on the sites, such as the public, and so forth. It is not simply my assessment that there is a risk, but there is an avowed intent by those unknown to continue with their activities.
- 6.6 Based on *American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396, I find that there is a strong case that the Court will grant a full injunction. It meets the balance of convenience test. I am also satisfied that damages are not an adequate remedy, and those paying are likely to be unable to pay.
- 6.7 The *Canada Goose* test has been set out in detail in the Claimant's skeleton, and I do not propose to go through each step. I find there are a group of persons not yet identified, but that are capable of being identified in the continuance of their activities. There is a sufficient and real risk.
- 6.8 The method of service proposed by the Claimant seems to me to be all that can be done in the circumstances which pertain. There is no doubt that additional publicity will follow from at least 50% of the Claimant's stations displaying notice. Even if that were not the case, any person walking onto, or finding themselves on, or trying to get onto premises of any petrol station, would immediately be on notice of those activities which are to be prohibited. The acts are an unlawful activity in any event.
- 6.9 Given the nature of the intended activities and consequences a penal notice is appropriate.
- 6.10 I am grateful to TWQC for drawing my attention to various other issues.
- 6.11 Of course, it is recognised under Articles 10 and 11 that there is a right to lawfully protest, and if these activities were a lawful protest, I would not be granting the injunction.

- 6.12 However, this is not a lawful protest, it is unlawful and not peaceful. The Defendants' activities are causing damage to property and putting the lives and well-being of others and themselves at risk. What must be achieved is a balance between right to lawfully protest, but what is to be prevented here is criminal activity.
- 6.13 I have regard to the tests set out by Lavender J in the *National Highways* case – what is sought here by the Claimant's complies and meets the test as set out there.
- 6.14 It also seems to me that Section 12(2) of the Human Rights Act as to service is met. There is no better way of achieving the proper balance between the right of those who are seeking to use the Claimant's services for lawful means - i.e., to buy petrol. However, and looking at both parts of Section 12(2), the Court is considering whether to grant relief that might prevent freedom of expression. This is not the case here. What is sought to be done by the Defendants is the tort of conspiracy to injure and amounts almost certainly to criminal activity.
- 6.15 In respect of Section 12(3) of the Human Rights Act, I accept entirely the submissions which have been made. Of course, activity perpetrated by the Defendants attracts publicity, but the activity itself is not publication – what is done is the unlawful act which therefore attracts publicity.
- 6.16 I do not see that the granting of the injunction interferes with anyone's right to lawfully protest, and I grant the Claimant's injunction in the terms sought.
- 6.17 The return date shall be set as Friday 13 May, at 10:30am with 24 hours' notice adequate for either party to come to court.