

Claim No: QB-2022-001241 (“Haven Claim”)

Claim No: QB-2022-001259 (“Tower Claim”)

Claim No: QB-2022-001420 (“Petrol Stations Claim”)

IN THE HIGH COURT OF JUSTICE

KINGS BENCH DIVISION

B E T W E E N :

(1) SHELL U.K. LIMITED

Claimant: (QB-2022-001241)

(2) SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant (QB-2022-001259)

(3) SHELL U.K. OIL PRODUCTS LIMITED

Claimant (QB-2022-001420)

- and -

PERSONS UNKNOWN AND ORS

[more fully described in the Relevant Claim Form]

Defendants

CLAIMANTS’ SKELETON ARGUMENT

Hearing: 21-23 April 2024 (1.5 days)

References in this Skeleton Argument:

- E.g. “[C/1/2]” are references to tabs/page numbers in the Core Bundle.
- E.g. “[PSB/1/2]” are references to tabs/page numbers in the Previous Service Bundle.
- E.g. “[PRB1/1/2]” are references to tabs/page numbers in the Previous Renewal Bundle Part 1.
- E.g. “[MB/A/2]” are references to the tabs/page numbers in the Miscellaneous Bundle.
- E.g. “[SB/1]” are references to the are references to the tab in the Supplemental Bundle.
- E.g. “[AB/1/2]” are references to the tabs/ page numbers of the Authorities Bundle.

Suggested Pre-Reading: (Time Estimate: 4 hours) -

- Judgment of Cotter J in *Shell v PU* [2024] EWHC 1546 (KB) (the “Cotter Judgment”) [AB/3]
- Judgment of Hill J in *Shell UK v PU* [2023] EWHC 1229 (the “Hill Judgment”) [AB/2]
- Re-Amended Petrol Stations Claim Form [MB/149/7641-7648]

- Re-Amended Petrol Stations Particulars of Claim [MB/150/7649-7664]
- Amended Haven Claim Form [MB/153/7676-7677]
- Amended Haven Particulars of Claim [MB/155/7680-7685]
- Amended Tower Claim Form [MB/154/7678-7679]
- Amended Tower Particulars of Claim [MB/157/7741-7744]
- Defence of Emma Ireland (D7) (“**Ireland Defence**”) [C/3a/352(a-c)]
- Defence of Charles Philip Laurie (“**Laurie Defence**”) (D8) [C/3c/352(e-g)]
- Order of Cotter J dated 24 April 2024 (Petrol Stations Claim) [C/4/353-364]¹
- Future Service Order of Cotter J dated 17 April 2024 (Petrol Stations Claim) [C/7/385-393]²
- Shell Petrol Stations Claim Draft Order [SB/6]
- Table of Witness Evidence [SB/12]
- First Witness Statement of Paul Eilering (“**Eilering 1**”) [C/3/18-39]
- Chronology of protestor activity since 11 March 2024 [C/3/42-58]
- Tenth Witness Statement of Alison Oldfield (“**Oldfield 10**”) [PSB/11/414-431]
- Second Witness Statement of Christopher Prichard-Gamble (“**Prichard-Gamble 2**”) [PRB/46/3207-3233]
- Application Notice dated 10 October 2024 [SB/3]
- First Witness Statement of Rachel Lindberg (“**Lindberg 1**”) [SB/9].

A. INTRODUCTION

1. In Autumn 2021, major UK roads, including the M25, were brought to a standstill by environmental protest groups (“**the Protest Groups**”), whose protests involved individuals gluing themselves to roads, immovable objects, or each other. This led to the first of a number of injunctions in this context being granted to National Highways. Many breaches followed. As did committals. In Spring 2022, similar protests started again but this time directed at the fossil fuel industry, including assets owned by Shell and its wider group of companies. In April/May 2022, individuals connected with those Protest Groups took part in a number of activities with the goal of maximising disruption to Shell’s lawful activities and thereby generating publicity for their movement. As recently as June 2024, one of the Protest Groups – Just Stop Oil (“**JSO**”) – has made its intentions clear and the evidence demonstrates that its campaign shows no sign of stopping and that activists are still willing to carry out unlawful activity to advance the campaign.
2. This is the Claimants’ skeleton argument in the final hearing of the three claims (“**the Claims**”), which have been managed together (though not consolidated), in which Shell has sought interim and final injunctions to restrain unlawful protest activity at Shell

¹ Injunctions in much the same terms were granted in the Haven Claim [C/5/365-374] and the Tower Claim [C/6/375-384].

² *Ibid*: Haven Claim [C/8/394-397] and the Tower Claim [C/9/398-401].

Haven (“**Haven**”) , Shell Centre Tower (“**Tower**”) and the Shell Petrol Stations (“**Petrol Stations**”) (together “**the Sites**”). References to “**Shell**” in this skeleton argument should be read as a reference to the relevant Claimant(s). Shell now seeks final orders for a period of 5 years from the expiry of the Cotter Orders (with provision for annual review).

3. There have been a number of interim injunctions granted in these proceedings:
 - a. interim injunctions were granted against Persons Unknown (“**PU**”) restraining unlawful protests at Haven and Tower on 5 May 2022 (Bennathan J).
 - b. an interim injunction was granted on 5 May 2022 (McGowan J) and a further interim injunction was granted on 20 May 2022 in the Petrol Stations Claim against PU restraining unlawful protests by PU at Shell petrol stations (Johnson J) (“**the Original Orders**”).
 - c. the Original Orders were then continued by order of Hill J dated 23 May 2023 (“**the Hill Orders**”).
4. On 15 March 2024, Soole J ordered the joinder of 14 Named Defendants to the Petrol Stations Claim and gave directions for a further review hearing (the “**Soole J Order**”).
5. That review took place before Cotter J, who continued the Hill Orders on 24 April 2024 with a new longstop date of 12 November 2024 (or the date that corresponds with four weeks after the final hearing) (“**the Cotter Orders**”) [C/4-6/353-384].
6. In this hearing, Shell seeks (the “**Orders**”):
 - a. final injunctions in materially identical terms as the Cotter Orders to last for 5 years (with a backstop of 12 November 2029) with provision for an annual review, consistent with the approach adopted by this Court in similar cases;
 - b. orders for alternative service in materially identical terms as the alternative service provisions which have been previously endorsed by the Court and which are currently in force pursuant to the orders made by Cotter J on 17 April 2024 relating to the service of future documents in respect of the Claims (“**the Cotter Service Orders**”) [C/6-9/385-401];
 - c. the removal of the Third Defendant in the Petrol Stations Claim, following her providing an undertaking [SB/11] and amendment of the Re-Amended Claim

Form and Re-Amended Particulars of Claim in the Petrol Stations Claim to strike out her name.

7. As with the previous interim injunctions, the Orders do not stop protestors from undertaking peaceful protests, whether near the Sites or otherwise. There is no intention by Shell to prohibit any lawful protest and the Orders have not stopped subsequent lawful protests outside Shell's premises [C/2/25, §4.2; C/2/27, §5.3-5.6]. Shell explains in its evidence that its 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 evidence and arguments in this case were fully considered before the original interim orders were made. There was no appeal.
8. The Original Orders were then reviewed in April 2023 at a contested hearing, which was dealt with as a rehearing with Leading and Junior Counsel on both sides, and the injunctive relief and its terms were found to be appropriate for the reasons set out in Hill J's comprehensive judgment.
9. Cotter J reviewed those orders again in April 2024 and considered there was no material change, was satisfied that the terms were appropriate for the reasons set out in Hill J's judgment and that there was a real and continuing risk of imminent and unlawful activities if the orders were to be discharged.
10. The Court is now being asked to grant final orders in materially identical terms to the Hill and Cotter Orders, which were carefully drawn and aimed at solely prohibiting activity which is clearly unlawful:
 - a. in relation to Haven and Tower, the Orders solely prohibit acts which would constitute trespass, private nuisance and damage to private land.
 - b. in relation to the Petrol Stations Claim, the structure of the Order makes it clear that it is only actionable where the conduct fulfils the ingredients of the tort of conspiracy to injure. The Persons Unknown as described as those who are "*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, with the intention of disrupting the sale or supply of fuel to or from the said station.*" Further, the Order provides that the Defendants must not do any of the acts listed in paragraph 3 where that conduct is undertaken "*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.” : see paragraphs 43 - 47 below.

11. As well as the evidence relied upon to date, Shell relies on Eilering 1 [C/2/18-39], Oldfield 10 [PSB/11/414-431] and Lindberg 1 [SB/9].
12. The Soole J Orders made provision for the Defendants to file evidence on which they wished to rely and to file and serve an Acknowledgement of Service by 12 April 2024 if they wished to defend the Claims [CB/10/406-407]. The Cotter Orders made further directions allowing a further period of time by requiring the Named Defendants and any other person falling within the definition of the First Defendant to file and serve an Acknowledgment of Service by 30 April 2024 and any defendants wishing to defend the claims, to file and serve their defence by no later than 15 May 2024: see, for example, Petrol Stations Order at §§9-10 [C/4/356]. Those dates have long since passed. The Claimants are in receipt of two defences from Emma Ireland (D7) [C/3a/352(a-c)] and Charles Philip Laurie (D8) [C/3c/352(e-g)] received on 16 May 2024 and 7 May 2024 respectively.
13. None of the remaining Named Defendants have engaged with or been involved in the proceedings save for the Third Defendant, who has signed the undertaking suggested by the Claimant, which all Named Defendants were invited to offer to the Court (discussed further below). As such, they are not entitled to defend the claims, be heard at this hearing or take any further role in these proceedings without further order of the Court: see, for example, the Petrol Stations Order at §11 [C/4/356].
14. In light of all the circumstances, including the continued threat posed by the Defendants, Shell’s position is that it is entitled to the final relief sought.

B. SERVICE

15. Section 12(1) – (2) of the HRA 1998 provides as follows:

“(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied— (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified” [emphasis added].

16. The Court is directed to the Cotter Service Orders. All documents in these proceedings (including the evidence and relevant orders) have been served on the relevant parties

(including PU and non-parties) as provided for in these Orders: see Oldfield 10 [PSB/11/414-431]. For the purpose of clarity, these provisions have been replicated in the draft Orders and the Court is invited to sanction the same.

17. The same process has been adopted to serve relevant parties with notification of this hearing, the draft order and this skeleton argument.
18. Consequently, the notice requirements in s.12(2)(a) of the Human Rights Act 1998³ (“HRA 1998”) have been satisfied.

C. BACKGROUND

19. The background is set out in the judgment of Johnson J in *Shell UK v PU* [2022] EWHC 1215 (the “*Johnson Judgment*”) at [10] – [19] [AB/1/6-8], the *Hill Judgement* at [10] – [21] [AB/2/29-31] and the *Cotter Judgment* at [8] – [13] [AB/3/62-64].

(i) The Claimants

20. The First and Second Claimants are, respectively, the freehold owners of (i) the Shell Haven Oil Refinery, a substantial fuel storage and distribution installation; and (ii) the Shell Centre 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.

(ii) The Sites

21. The titles to Haven and Tower and Shell’s interests in these sites are explained in the First Witness Statement of Alison Oldfield (“*Oldfield 1*”): [PS/37/2586-7]. The Haven and Tower sites can be seen in the Plans appended to the Cotter Orders (Haven Claim: [C/5/372-373]; Tower Claim: [C/6/382-383]).
22. The nature of the Sites is set out in Eilering 1 §§3.2 – 3.9 [C/1/23-24]. Additional detail in respect of the Shell Petrol Stations is set out in the Fourth Witness Statement of Benjamin Austin, dated 14 March 2024 (“*Austin 4*”) §2.1 [PRB1/46/3029 -3039] (and

³ This provision, where it applies, requires the Court to be satisfied that “*the applicant has taken all practicable steps to notify the respondent*” if the respondent is neither present nor represented.

more fully set out in his first (3 May 2022), second (10 May 2022) and third (30 March 2023) witness statements).

23. There has never been any dispute as to Shell's entitlement to the relief sought in respect of the Sites: see, most recently, the Cotter Judgment at [2]. Therefore, this is not dealt with further here.

(iii) The Undertaking Offers

24. On 16 October 2023, Shell's solicitors wrote to 29 of the 30 (one individual is deceased) individuals who were identified as having been arrested in connection with protest incidents at Acton Vale, Action Park and Cobham Services and invited the individuals with an opportunity to provide an undertaking to the Court in the form annexed to the letter: AJO4 §3.2.9 [PS4/29/1609]. The form of the undertaking is the same as that which was considered and endorsed by Cotter J in *National Highways v Persons Unknown* [2023] EHC 1073 and appended at Annex B of that judgment.
25. Shell's solicitors then sent a further letter on 16 November 2023 to those individuals that had not provided an undertaking. In total, 14 individuals provided undertakings, leaving 15 named individuals that Shell sought to join to the proceedings: AJO4 §3.2.11 [PS4/29/1610]. Subsequently, on 5 March 2024 (ahead of the renewal hearing), another defendant subsequently provided an undertaking: AJO5 §4 [PS3/27/1461]. 14 individuals were then joined to the proceedings.
26. Most recently, when serving the exhibit to Eilering 1, Shell's solicitors simultaneously offered a further opportunity to the Named Defendants, on 2 July 2024, to provide an undertaking: AJO10 [PSB/12/468-9].
27. Only one of the Named Defendants - Louise Harris (D3) – has offered such an undertaking (on 26 September 2024) [SB/11]. The acceptance of such an undertaking is ultimately a matter for the Court (see Cotter J at [113] of *National Highways*) but the undertakings have been offered on the basis that Shell suggests that the Third Defendant may be released from being a Defendant on the basis that the undertaking can be accepted. On that basis, Shell invites the Court to remove the Third Defendant as a party to the Petrol Stations Claim pursuant to CPR r.19(1) or (11) and to permit it to make the necessary amendment to the Re-Amended Claim Form and Re-Amended Particulars of Claim. This offer remains open to all remaining Named Defendants.

(iv) The Defendants

28. Haven and Tower Claims – D1 are PU.

29. Petrol Stations Claim:

- a. D1 are PU.
- b. The Named Defendants are those individuals who were joined by the Soole J Order having been arrested for alleged or on suspicion of criminal damage and/or aggravated trespass and/or conspiracy to destroy or damage property and/or wilful obstruction of the highway and/or causing a public nuisance and/or being in possession of an offensive weapon at the Petrol Station Sites in connection with certain environmental protest groups. The nature of the direct action is pleaded in the Re-Amended Particulars of Claim [MB/L/7650-7661] and is considered further below.
- c. Shell seeks a final injunction against the remaining Named Defendants who have been invited to provide undertakings but have failed or refused to do so. The effect is that there remain 13 Named Defendants against whom the injunction is sought.

(v) The Original Threat

30. The threat which provoked the Claims in April / May 2022 and the applications for the interim injunctions was disruptive protest under the banners of JSO, 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/4/138]:

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

31. The background, factual allegations and the basis on which the original Petrol Stations Claim order was sought, as they stood on 13 May 2022, are fully set out in the *Johnson Judgment* at [10] – [17] [AB/1/6-8].

32. The background to the original Tower Claim order and Haven Claim order was sought is set out in the *Hill Judgment* at [12] – [17]. The basis of Shell’s view that there was

a real and imminent risk of unlawful activity directed at these three Shell entities and the wider Shell group of companies is fully set out in:

- a. Brown 1 [PRB9/78/6504-6518] and Brown 2 [PRB7/64/5887-5892] made in respect of the Haven Claim; and
- b. Garwood 1 [PRB8/76/6411-6418] and Garwood 2 [PRB7/67/5931-6001] made in respect of the Tower Claim.

33. Essentially:

- a. Autumn 2021 - a number of direct action protests took place, which involved the blocking of major roads in the UK, including the M25, including by activists gluing themselves to roads, immovable objects, or each other. This resulted in National Highways being granted a number of injunctions, which were breached many times and committal proceedings followed.
- b. Spring 2022 – direct action protests involving similar tactics re-commenced, but directed at the fossil fuel industry rather than the road network, including at assets owned by the Shell group of companies with the apparent aim of causing maximum disruption to Shell’s lawful activities and thereby generate publicity for their protest movement. In August 2022, JSO promised that such activities would continue “*until the government makes a statement that it will end new oil and gas projects in the UK*”⁴ Unsurprisingly, that statement was not forthcoming.

(v) Review hearing before Hill J

34. The factual basis for the continuation of the injunctions pursuant to the Hill Orders is fully set out in the *Hill Judgment* [AB/3]:

- a. in respect of Haven, the evidence showed a significant number of incidents in relation to oil refinery sites between August 2022 and February 2023: at [30];
- b. in respect of Tower, the evidence suggested that Bennathan J’s injunction had had a deterrent effect. However, it continued to be a prime location for protests and corporate buildings more broadly, had been the target of unlawful activity since the injunction was made: at [31];

⁴ <https://www.independent.co.uk/climate-change/news/just-stop-oil-m25-petrol-station-cobham-b2151462.html>

c. in respect of Petrol Stations:

- i. there had been two incidents affecting ten petrol stations during the relevant period in which fuel pumps were vandalised, customers' access to the forecourt was blocked and on the first of these dates protestors super glued themselves to the forecourt; and
- ii. the evidence described a significant number of incidents of direct-action protest against the wider Shell business and the wider oil and gas industry and operators within it: at [32] – [34].

35. Even though, at the time of the hearing, there did not appear to have been any direct unlawful action at Haven or Tower, Hill J was satisfied that that the well-documented background of past direct-action protest targeted at sites owned or operated by those involved in or connected with the oil industry and past statements of intention by protest campaign groups to engage in confrontational direct-action activities were sufficient evidence of a continued threat that justified the continuation of the injunctions and that they continued to have a deterrent effect.

(vi) Review hearing before Cotter J

36. In April 2024, Cotter J was satisfied that there was “a *real and continuing risk of imminent and unlawful activities if the orders were discharged*” (the *Cotter Judgment* at [46]).

37. When considering the risk of further activities, it was said to be significant that:

- a. first, “*the named defendants and those within the groups identified as likely unless restrained to engage in conduct likely to be unlawful have in no sense gone away or changed their views*”: at [40];
- b. second, there had been no material reduction in risk since the Hill Orders and there had been ongoing protestor activity. More specifically (at [41]):

“There have been 63 separate protests at Shell Tower since the April renewal hearing. Apart from three incidents in June 2023 when protesters accessed the entrance to the Tower, these appear, I say no more, to have been lawful protests. I pause to observe that this is also of significance as it gives credence to the claimants' repeated assertion that it does not seek to prevent protesters from undertaking lawful peaceful protests, whether or not such protests arise near to its premises. It also highlights how it is possible to protest against the use of fossil fuels without infringing the rights of the claimants or others.”

- c. third, the Protest Groups had made comments reiterating that this is “*an indefinite campaign of civil resistance*” and (in March 2024) that “*non violent civil resistant to a harmful state will continue with coordinated radical actions*”: at [43];
- d. fourth, that the Named Defendants could have but had failed or refused to give undertakings despite having been repeatedly invited to do so, which provided an insight into their mindset (noting the observations of Linden J in the *Esso Petroleum* case (at [45])):

“it would have been easy for Defendants to give assurances or evidence to the court that there was no intention to carry out direct action at the various sites, but a decision was taken not to do so. As I have indicated in other cases, this provides an insight into the mindset of those who would, unless restrained, engage in unlawful activities with the aim of halting the Claimants’ business in fossil fuels.”

See also *Esso Petroleum* at [67], per Linden J [AB/16].

(vii) Other injunctions granted against environmental protestors

- 38. There have been a number of interim and final injunctions granted in relation to direct action threatened by environmental protestors. These include but are not limited to, most recently⁵:
 - a. 9 July 2024: an interim injunction was granted by Julian Knowles J in *Heathrow Airport Limited v Persons Unknown* (Claim No: KB-2024-002210).
 - b. 5 July 2024: an injunction was granted by HHJ Coe K.C. in *Manchester Airport Plc and ors v Persons Unknown* (Claim No: KB-2024-002132)
 - c. 20 June 2024: an interim injunction was granted by Julian Knowles J in *London City Airport Ltd and ors v Persons Unknown* (Claim No: KB-2024-001765).
 - d. 15 May 2024: an interim injunction was granted by Ritchie J in *High Speed Two (HS2) Ltd v Persons Unknown [2024] EWHC 1277 (KB)*.
 - e. 26 January 2024: a final injunction was granted by Ritchie J in *Valero Energy Ltd v PU [2024] EWHC 134 (KB)*.
 - f. 6 October 2023: a final injunction was granted by Mr Simon Gleeson in *UK Oil Pipelines Ltd v PU (unreported)*.

⁵ These are not included in the authorities bundles.

- g. 31 August 2023: a final injunction was granted by Linden J in *Esso Petroleum Company Ltd v PU* [2023] EWHC 1837 (KB).
- h. 14 July 2023: an interim injunction was granted by Sweeting J in *North Warwickshire BC v PU* [2023] EWHC 1719 (KB). The Judge found that the claimant was “likely” to obtain an injunction at trial pursuant to s.12(3) HRA 1998.
- i. 23 May 2023: a final injunction was granted against JSO in *Transport for London v Lee* [2023] EWHC 1201 (KB) (Eyre J).
- j. 3 May 2023: a final injunction granted against Insulate Britain in *Transport for London v PU* [2023] EWHC 1038 (KB) (Morris J).

see also Prichard-Gamble 2 at §7.4 [C/48/3228].

D. CONTINUED THREAT

(i) The Threat

39. It is Shell’s position that there exists a continued threat of the torts complained of occurring at the Sites and a real risk that without the protection of the injunctions, unlawful activity would resume. This is on the basis of:
- a. The past direct action that occurred in and around the Sites which led to the Claims and the grant of the Original Orders.
 - b. The content of witness evidence of Eilering 1 §§8.3-8.8 [C/236-38] (see also Prichard-Gamble 2 at §§2.4-2.5 [PRB1&2/48/3210]), namely that since the grant of the Original Orders, these three Shell entities, the wider Shell business and the wider oil and gas industry and operators have continued to be key targets for direct action, some of which is unlawful.
 - c. The Defendants’ failure to give an undertaking despite having been offered the opportunity to do so on numerous occasions or to provide any assurances that they will no longer target Shell by engaging in direct-action protest.
 - d. The clear indications that the Protest Groups plan to continue their campaigns and direct action for the foreseeable future. As recently as June 2024, one of the groups - JSO - has repeated its statements that supporters will continue to take action to “demand necessary change” [C/3/349] that this UK government “end

the extraction and burning of oil, gas and coal by 2030” [C/3/319] and continue “the resistance” if the Government fails to “sign up to a legally binding treaty to phase out fossil fuels by 2030” [C/3/329]: see also [C/2/22]; [C/3/319].

- e. This is in addition to recent incidents of direct action at UK airports (see above) involving alleged criminal damage and aggravated trespass, arrests and civil injunctions [C/3/322, 330] and other direct action (summarised at [C/2/27-35]) including at universities and statements by student members of JSO that “[t]his November, hundreds of students are coming to London – this is going to be the biggest episode of civil disobedience this country has ever since. Be there, November 12th” [C/3/252; 351-352].

40. Shell has prepared a chronology detailing the incidents which they have been able to identify since the Cotter Orders were granted of direct-action protest against these three Shell entities, the wider Shell business and the wider oil/gas industry and operators within it (including organisations connection to the use of (and funding towards the use of) fossil fuels generally). As Eilering 1 sets out at §4.2 [C/2/25, this chronology shows:

- a. there have not been any incidents of unlawful breach of the Orders at any of the locations covered by the current injunctions;
- b. protests have regularly occurred outside Shell’s premises, most often Tower and occasionally with significant numbers of protestors being present;
- c. protestors continue to target Shell senior executives as part of a more recent tactic employed by activists and such actions can be extreme (for example, senior executives have previously received death threats via social media⁶, and doorstepped outside of Shell premises); and
- d. protest activity – unlawful and lawful - targeting the wider oil and gas industry and the use of fossil fuels generally continues unabated and is far from reaching a conclusion.

41. In addition, over the course of 2023, protestors also turned some of their attention to large-scale sporting and other high-profile events: Eilering 1 §6 [C/2/33]. The nature of the incidents and the extremity (in some cases) of the lengths protestors are willing to go to is further evidence that some individuals remain willing to carry out unlawful

⁶ Albeit such threats are rarely credible.

activity to advance their campaign. These campaigns show no sign of stopping: Eilering 1 §§4.7-8 [C/2/26].

42. As Linden J put it in *Esso Petroleum* at [67]:

“it appears that the effect of the various injunctions which have been granted in this case and others has been to prevent or deter them from taking the steps prohibited by the orders of the court although, of course, not invariably so. If, therefore, an injunction is refused in the present case the overwhelming likelihood is that protests of the sort which were seen in 2021/2022 will resume.”

(ii) The Harm

43. The gravity of the potential harm and some of the anticipated consequences of unlawful protest activity and the broader impact of such activity at the Sites is further addressed in the *Johnson Judgment* at [18] – [19] [AB/1/7-8].

44. In summary:

- a. Haven and the Shell Petrol Stations store significant quantities of highly flammable petroleum products. If the injunctions were not in place, there is a real risk of a potentially very serious or fatal incident which would cause grave and irremediable harm to the protestors, Shell’s staff and/or the public which would be incapable of *ex post facto* remedy: Prichard-Gamble 1 at §6.10 [PRB/x]; see also Prichard-Gamble 2 at §3.10 [PRB1&2/48/3212] and Eilering 1 at §7 [C/2/35-6]; [51] of the *Cotter Judgment* (“*the health and safety risks, if triggered, could cause serious or fatal injuries*”).
- b. Further unlawful activity at Shell Centre Tower presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and others: Prichard-Gamble 2 at §§3.3-3.5 [PRB1&2/48/3211]; *Hill Judgment* at [17] [AB/3/17].
- c. The direct action which is to be prohibited would cause Shell and others to suffer loss and damage which could not be adequately compensated for: Eilering 1 at §§7.1-7.5 [C/2/36].

45. It is clear from the evidence that unlawful protest at the Sites remains a continuing and real threat and that the consequences of such activity remain just as serious as before: Prichard-Gamble 2 at §§6.1-6.3 [PRB1&2/48/3226]; see also *Johnson Judgment* at [34] [AB/5/145] and *Hill Judgment* at [134] – [136] [AB/3/46].

46. The risk of future harm was carefully considered by Hill J who accepted Shell's evidence that:

“(i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them.”

See *Hill Judgment* at [39] [AB/3/34].

47. In April 2024, Cotter J was satisfied that nothing had changed since then and the evidence of events that have taken place since the granting of the Cotter Orders provides clear grounds for the continuation of the Original Orders by the grant of final anticipatory injunctions.

E. GENERAL PRINCIPLES

(i) Final Injunctions

48. The jurisdiction to grant both interim and final injunctions is founded in s.37 of the Senior Courts Act 1981, which confers power on the High Court to grant such injunctions “*in all cases in which it appears to the court to be just and convenient to do so*” and “*on such terms and conditions as the court thinks fit*”.

49. In law, a landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on his land: see **Snell's Equity (34th ed)** at para 18-012. As the claims are for anticipatory injunctions, based on the fear of an actionable wrong, Shell must prove that there is a real and imminent risk of the defendant causing the torts feared, not that the torts have already been committed, per Longmore LJ in *Ineos Upstream v Boyd* [2019] 4 WLR 100 at [34(1)]; Sir Julian Flaux in *National Highways v PUs* [2023] 1 WLR 2088.

(ii) Substantive and procedural requirements in PU Cases

50. The test to be applied when granting a final injunction in the context of protests against PU (including newcomers) is not materially altered by the decision of the Supreme

Court in *Wolverhampton CC v London Gypsies and Travellers* [2024] 2 WLR 45 [AB/x]⁷.

51. The Supreme Court confirmed that injunctions can be granted against PU, including “newcomers”: at [167] [AB/13/466] and expressly stated (at [235]) [AB/13/481] that:

“nothing we have said should be taken as prescriptive in relation to newcomer injunctions in other cases, such as those directed at protestors who engage in direct action by, for example, blocking motorways, occupying motorway gantries or occupying HS2’s land with the intention of disrupting construction”.

52. The following seven *Canada Goose* guidelines (at [82]) [AB/7/211] remain good law⁸, must still be satisfied in claims for protest injunctions against PU and have been applied in all subsequent protest injunction cases⁹:

“(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) 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 nontechnical 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

⁷ See in particular at [167], and then expanded upon at [188]-[189] and [218]-[232]. The case involved traveller injunctions which are different to protestor cases because local authorities have duties in relation to travellers.

⁸ See e.g. Ritchie J in *Valero* at [57].

⁹ *Canada Goose v PU* [2020] 1 WLR 2802. Although it was an interim injunction case, there is no relevant jurisdictional difference between interim and final injunctions: *Wolverhampton* at [139], [151], [167] and [178].

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. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application.”

53. The Supreme Court identified a number of other factors (at [167], [187] – [188], [218] – [236]), but those are materially the same as those developed in *Canada Goose* at [82]. The position is conveniently summarised by Ritchie J in *Valero* (at [58]) [AB/14/513] and those additional factors are addressed below.

54. The Supreme Court made it clear that (at [236]) [AB/13/482]:

“Often the circumstances of these cases vary significantly one from another in terms of the range and number of people who may be affected by the making or refusal of the injunction sought; the legal right to be protected; the illegality to be prevented; and the rights of the respondents to the application. The duration and geographical scope of the injunction necessary to protect the applicant’s rights in any particular case are ultimately matters for the judge having regard to the general principles we have explained” [emphasis added].

F. THE FINAL INJUNCTION – SUBMISSIONS

55. The relief sought by Shell in the grant of final injunctions is materially identical to the relief obtained in the Hill and Cotter Orders, save for duration. For ease of reference, the Claims are addressed together below, on the basis that the issues and legal principles applicable to each Order are identical and the evidential foundation for the continuation is materially similar. Where there are specific issues relating to individual Orders, those are identified below.

56. In summary, Shell submits that:

- a. in respect of the Haven and Tower claims, they have established a relevant cause of action, namely trespass to land and private nuisance; and
- b. in respect of the Petrol Stations Claim, they have established a relevant cause of action, namely the tort of conspiracy to injure.
- c. the criteria in *Canada Goose* and *Wolverhampton* are satisfied;
- d. the defences advanced must fail, even by reference to Articles 9, 10 and 11 ECHR.
- e. the requirements of an anticipatory injunction are satisfied.

(i) Substantive requirements

(1) Cause of Action

57. Shell has clearly identified civil causes of action in the claim form and particulars of claim.
58. In respect of the Haven and Tower Claims, Shell relies on trespass to land and private nuisance (for a description of tort of private nuisance, see *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB) at [85], per Knowles J) [AB/10/303].
59. In respect of the Petrol Stations Claim, the Claimant relies on the tort of conspiracy by unlawful means¹⁰. The Claimant relies on this tort in circumstances where the Shell Petrol Stations have attracted a coordinated campaign of protest intended to harm the claimant economically and impede its ability to carry out its lawful business: see analysis in *Esso Petroleum* at [23], [38], [67] – [68]; see also *Johnson Judgment* at [26]. The ingredients of that tort are identified in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 per Leggatt LJ at [18]: (a) an unlawful act by the defendant, (b) with the intention of injuring the claimant, (c) pursuant to an agreement with others, (d) which injures the claimant.
60. As to (a), the torts which form the subject of the Order involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant. To establish the tort of conspiracy to injure, it is not necessary to show that the underlying unlawful conduct is actionable by the claimant: see *Johnson Judgment* at [29]. As to (b), as Johnson J pointed out at [30], the intention of the Defendants' unlawful activities is plain from their conduct and from the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. They are not solitary activities but are protests involving numbers of activists acting in concert. They therefore apparently undertake their protest activities in agreement with one another, as required by (c), and (d) is satisfied on the basis that loss is occasioned because, amongst other things, the petrol stations are unable to sell the Claimant's fuel.

(2) Full and Frank Disclosure (*Wolverhampton* at [219])

¹⁰ The Claimant does not have a sufficient degree of control or possession of the whole of the land where unlawful activity is anticipated to enable it to plead trespass to land or nuisance against the individuals concerned. Neither does it have necessary ownership of all of the items targeted and damaged to allege trespass to goods.

61. As demonstrated by their evidence, Shell and its legal team have evidenced full and frank disclosure.

(3) Sufficient evidence to prove the claim / Is there a sufficiently real and imminent risk of damage so as to justify the grant of what is a precautionary injunction?

62. It is only appropriate to grant the injunction¹¹ if there is a sufficiently “real” and “imminent” risk of a tort being committed to justify precautionary relief (see above and, for example, *Canada Goose* at [82(3)]).

63. The evidence before the Court shows the position remains the same as that assessed by Hill J in April 2023 (at [147]) (and adopted by Cotter J in April 2024 at [40] – [46]), namely that:

“unless restrained by injunctions the Defendants will continue to act in breach of the Claimants’ rights; that there continues to be a real and imminent risk of future harm; and that the harm which might eventuate is sufficiently “grave and irreparable” that damages would not be an adequate remedy: see *Vastint Leeds BV v PU* [2018] EWHC 2456 (Ch) at [31(4)(d)], per Marcus Smith J at [31(3)((d)).”

64. It is relevant that on each of the occasions that the Claims have come before the Court in these proceedings, the judges have found that Shell was “likely to succeed at trial”.

65. It is also relevant that in recent cases (see paragraph 38 above) brought by those in the energy sector, the Courts have been satisfied that there continues to be a sufficiently real and imminent risk of direct action to justify maintaining the injunctive relief.

66. Any reduction in activity as a result of the interim injunctions do not undermine Shell’s entitlement to a final injunction. Shell remains a prominent target for protest activity and invites the Court to adopt the assessment of Ritchie J in *Valero* (at [64]) [AB/14/516]:

“I find that the reduction or abolition of direct tortious activity against the Claimants’ 8 Sites was probably a consequence of the interim injunctions which were restraining the PUs connected with the 4 Organisations and that it is probable that without the injunctions direct tortious activity would quickly have recommenced and in future would quickly recommence”.

67. The observation of Cotter J (paragraph 37(d) above) is also relevant here, namely that it would have been very easy for the Protest Groups to give assurances or evidence to the Court that there was no intention to carry out direct action at the Sites but that they did not do so: at [45].

¹¹ See fn10 above.

68. Further, in relation to the Petrol Stations Claim, the Court is invited to draw an inference that a person refusing to provide the undertaking which had been suggested by the Claimant is someone who continues to pose a risk of the direct action protests currently prohibited by the injunction.

(4) Defences

69. Two defences have been filed in respect of the Petrol Stations Claim by D7 and D8) – these are dealt with in accordance with paragraph 55 above.

70. In so far as those defences are understood, it is maintained that:

- a. the Order amounts to an unlawful interference with their Article 9, 10 and 11 ECHR rights;
- b. the actual loss and disruption are entirely proportional to the acts committed by Shell in pursuit of its business; and
- c. the Aarhus Convention protects environmental protests from excessive use of the law and these defendants are effectively being tried twice for the same acts of protest.

ECHR Rights

71. As to Article 9, the Claimant submits there is no interference with the Defendants' rights to manifest their beliefs. Even if that were not the case, then it can be assumed the analysis below applies equally to any interference with Article 9.

72. As to Articles 10 and 11, this is a re-run of the argument made by Leading Counsel on behalf of an interested party at the contested hearing before Hill J. The Court has previously found that there is no unjustifiable interference with the Claimant's rights under Articles 10 and 11 and the position is unchanged.

73. The Petrol Stations Order has been carefully circumscribed so as to prohibit only unlawful activity and (as expressly stated in the recitals to each of the Orders) its purpose is not to prohibit any lawful protest. Johnson J was satisfied (as was Hill J) that it interferes with rights of expression and assembly, but it does not impact on the core of those rights and that the Defendants are not prevented from congregating and expressing their opposition to Shell's conduct (including in a loud or disruptive fashion, in a location close to Shell sites), so long as it is not done in a way which involves

unlawful conduct: [36] of the *Johnson Judgment*; see also at [176] of the *Hill Judgment*.

74. The Court is invited to adopt Hill J's reasoning and conclusions at [179] – [180] (as Cotter J did at [59]):

- a. *“the injunctions strike a fair balance between the Defendants’ rights to assembly and expression and the Claimants’ rights: they protect the Claimants’ rights insofar as is necessary to do so but not further;*
- b. *“the interferences with the Defendants’ rights of free assembly and expression caused by the injunctions are necessary for and proportionate to the need to protect the Claimants’ rights.”*

75. It is also relevant that the injunctions sought by Shell relate solely to private land. The ECHR rights do not confer a right to enter onto private land: **DPP v Cuciurean [2022] EWHC 736 (Admin)**, [45] and [76]-[77]; **Ineos** at [36] (Longmore LJ).

76. As such, this defence should be dismissed.

Proportionality of loss to acts being committed by Shell

77. The crux of the defence here is that the Court should not grant the final injunctions because the actual loss and disruption flowing from the prohibited activities is *“entirely proportional to the acts being committed by the claimant[s] in pursuit of their business.”*

78. Similar arguments have been considered and rejected before. The Petrol Stations Order protect the Claimant’s AIP1 rights and the right to engage in a lawful business without tortious interference. As Johnson J put it (at [57] of the *Johnson Judgment*):

“The defendants might say that there is an overwhelming global scientific consensus that the business in which the claimant is engaged is contributing to the climate crisis and is thereby putting the world at risk, and that the claimant’s interests pale into insignificance by comparison. This is not, however, “a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important” – *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039 per Lord Neuberger at [41]. It is not for the court, on this application, to adjudicate on the important underlying political and policy issues raised by these protests. It is for Parliament to determine whether legal restrictions should be imposed on the trade in fossil fuels. That is why the defendants’ actions are directed at securing a change in Government policy. The claimant is entitled to ask the court to uphold and enforce its legal rights, including its right to engage in a lawful business without

tortious interference. Those rights are prescribed by law and their enforcement is necessary in a democratic society. The aim of the injunction is therefore sufficiently important to justify interferences with the defendants' rights of assembly and expression: cf *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 per Morgan J at [105] and § per Leggatt LJ at [45] and [50]" [emphasis added].

See also *Hill Judgment* at [174].

79. Shell's rights are prescribed by law and their enforcement is necessary in a democratic society. Conversely, the Defendants' interference with these rights is not prescribed by law. There is no relevant legal proportionality assessment to be conducted by the Court here.

80. As such, this defence should also be dismissed.

Existence of criminal offences and the Aarhus Convention

81. This defence was signposted by D8 (orally) at the Cotter J hearing and can be broken down into two parts (see Ireland and Laurie Defences §2 :

- a. First, "*fear of prosecution will prevent the unlawful activity which is prohibited by their terms. Where the criminal law provides that conduct will be an offence, with the potential for significant penalties, including imprisonment, the civil law does not need to provide additional protection*": *Cotter Judgment* at [25].
- b. Second, the Aarhus Convention protects environmental protests from excessive use of the law and this is a case where the Defendants are being tried twice (i.e. in both the civil and criminal jurisdictions) for the same act of protest.

82. In response to the first, the relevant context is the Public Order Act 2023 ("**the 2023 Act**"), which came into force on 3 May 2023 (after the Hill J Orders). The Court is referred to Cotter J's consideration of authority at [25]-[34] of the *Cotter Judgment* and his analysis at [35] – [38]:

- a. there has been some reluctance on the part of the courts to order civil injunctions when parallel statutory or criminal processes are available;
- b. civil orders differ from criminal proceedings in that they address *prospective* behaviour so that damage or harm is avoided. Criminal proceedings (if brought,

this being a matter out of the control of the party¹² potentially subject to harm or damage) ordinarily deal with matters once the damage or harm has occurred, save for inchoate offences. They are also likely to be more protracted;

- c. however, where there are no statutory alternatives preventing *future* conduct and the position is the reliance upon subsequent criminal action as a deterrent, the argument in favour of the ability to use a civil injunction is stronger;
- d. the evidence shows that some of the unlawful activity to date has clearly been “criminal”, such as criminal damage, but the existence of these offences was clearly not a sufficient deterrent: see also Eilering 1 at §8.5 [C/2/37-8]. As such, it cannot be safely assumed that the introduction of new offences will guarantee continued compliance with the Orders;
- e. this is the case in which the Claimants are able to rely on their right to possession/to control access to their property (save that in respect of some of the Petrol Stations, they do not hold the leasehold / freehold interest but control the use of its branding and own equipment used for dispensing fuel at the site). In such circumstances, such a claimant has the right to seek an injunction and the existence of criminal proceedings cannot displace that: see Lord Neuberger MR in the *Mayor of London v Hall* [2011] 1 WLR 504 at [52] – [57].
- f. as to the scope of the 2023 Act, it does not cover all of the unlawful acts which form the subject of the Orders in any event and cannot be said to provide sufficient protection:
 - i. the unlawful activity has included activity beyond locking-on, and section 7 only covers the key national infrastructure and not all of the property covered by the Orders;
 - ii. the maximum sentence for the offences under sections 1, 2 or 7 is no more than 12 months (in some cases just a fine), whereas the maximum penalty for contempt for breach of an order is much greater at two years, so a much greater deterrent.

¹² A point made in the hearing before Cotter J was that bringing criminal proceedings is often reliant on police resources. In Shell’s experience, the Shell injunctions were actually obtained initially because the police asked Shell to provide assistance to them in view of the onerous burden they were facing. That situation is exacerbated given current additional demands on police resources.

83. The Court is invited to adopt the same reasoning and analysis as Cotter J (at [38]), namely that the existence of criminal offences that could prevent criminal activity *may* be a matter relevant to the exercise of the Court’s discretion at the final hearing. However, it cannot be put any higher than that. It is certainly not a “*knockout punch*” as regards the grant of the final orders. Indeed, final orders within the same context have been granted by the Court since the coming into force of the 2023 Act: see, for example, *Valero, HS2 (2024)* and the airport cases (see above).
84. For completeness, a materially identical argument was also recently considered and did not justify the refusal of an injunction in *HS2 (2024)* above. The context was a review hearing of a route-wide interim injunction granted to prohibit unlawful interference by known defendants and PUs with the claimants' work on building the HS2 railway. One of the defendants submitted that the 2023 Act had created new criminal offences such that there was no need for the continuation of the civil injunction, as the claimants had an alternative remedy through the criminal statute: at [38]. The Court approached the review of an interim injunction by considering, on the evidence, whether anything material has changed: at [32].
85. As part of that exercise, Ritchie J considered that new criminal offences, which had come into force since the grant of the previous injunction to deter and punish protesters taking direct action, with penalties including imprisonment, constituted clear and obvious changes which are material to the interim injunction: at [39]. He took the matter into account in determining the question as to whether the claimant had provided sufficient evidence to prove the claim/likely to succeed at trial and compelling justification to continue the injunction: at [44]. The judge nevertheless extended the *interim* injunction for 12 months, although limited it to a particular phase of the works and land: at [45]; [63]. This “defence” was not the reason for that limitation¹³.
86. As to the reliance on the Aarhus Convention (Full title: The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), the defence is unclear, which leaves the Claimant having to anticipate what might be said.
87. To the extent the complaint is related to the existence of both civil and criminal liability for the same acts, this is dealt with above.

¹³ See [27], [55].

88. To the extent that the defence goes further than that, and it is contended that the Aarhus Convention protects environmental protestors from excessive use of the law, that is misconceived. This is an unincorporated treaty¹⁴ such that two principles of “constitutional orthodoxy” reign supreme:

- a. domestic courts have no jurisdiction to construe or apply treaties which have not been incorporated into national law; they are effectively non-justiciable;
- b. such treaties, unless incorporated into domestic law, are not part of that law and therefore cannot be given direct effect to create rights and obligations under national or municipal law.

See *R (SG) v Secretary of State for Work and Pensions* [2015] 1 WLR 1449 at [90].

89. As such, this defence should also be dismissed.

(5) Is there a compelling justification (*Wolverhampton* at [188]) / Does the balance of convenience otherwise lie in favour of the grant of the order?

90. As damages are not an adequate remedy and the cross-undertaking is adequate protection for the Defendants, it is not necessary separately to consider the balance of convenience: see *Johnson Judgment* at [38] [AB/1/15]. In any event, the Court is invited to adopt Hill J (at [141] – [144]) and Cotter J’s (at [52]) reasoning and conclusion - the balance of convenience is in favour of continuing the relief. There is a “compelling justification” for the injunction against PUs to restrain unlawful activity at the Sites and protect Shell’s AIP1 rights.

(6) Are the interferences with the Defendants’ rights of free assembly and expression necessary for and proportionate to the need to protect the Claimants’ rights: Articles 10(2) and 11(2), read with the HRA, section 6(1)?

91. As set out above, all three injunctions interfere with the Defendants’ rights under Articles 10(1) and 11(1): see *Hill Judgment* at [172]. However, such interferences can be justified where they are necessary and proportionate to the need to protect Shell’s rights. As Lord Sales JSC explained in *DPP v Ziegler* [2022] AC 408 at [125] [AB/9/274] the test is as follows:

¹⁴ It should be noted that part of the Aarhus Convention has been implemented via the provisions relating to the legal cost of environmental challenges: see CPR Part 46.

“...the interference must be “necessary in a democratic society” in pursuance of a specified legitimate aim, and this means that it must be proportionate to that aim. The four-stage test of proportionality applies: (i) Is the aim sufficiently important to justify interference with a fundamental right? (ii) Is there a rational connection between the means chosen and the aim in view? (iii) Was there a less intrusive measure which could have been used without compromising the achievement of that aim? (iv) Has a fair balance been struck between the rights of the individual and the general interest of the community, including the rights of others?”.

92. Shell invites the judge to adopt the analysis of Hill J (at paragraph 74 above) (as followed by Cotter J at [59]) - interference with the Defendants’ rights in the form of the final injunctions is necessary for and proportionate to the need to protect Shell’s rights.

(7) Damages not an adequate remedy: would damages be an inadequate remedy for the Claimants and would a cross-undertaking in damages adequately protect the Defendants?

93. The Court is invited to adopt, as Cotter J did (at [51]), Hill J’s reasoning and conclusions: [137] - [140] of the *Hill Judgment*. Given the sorts of sums involved and the practicality of obtaining damages, the latter would not be an adequate remedy. There remains no evidence that the Defendants have the financial means to satisfy an award of damages. More importantly, the health and safety risks, if triggered, could cause serious and/or fatal injuries for which damages would not be adequate. The Petrol Stations Claim involves economic torts and no evidence has been put forward of the Defendants’ finances or ability to satisfy any damages. Conversely, Shell has offered a cross-undertaking in damages (see e.g. First Schedule to Petrol Stations Claim draft Order [SB/6]) in case this becomes necessary and has the means to satisfy any such order, which would be an adequate remedy for the Defendants (see *Wolverhampton* at [234]).

(ii) Procedural requirements

(8)(a) Are the Defendants identified in the claim forms and the injunctions by reference to their conduct: *Canada Goose* at [82(2)]; *Wolverhampton* at [221]?

94. The Court is invited to adopt the reasoning and conclusions of Hill J at [170] (adopted by Cotter J at [58]) that the descriptions of the PU are sufficiently precise to identify the relevant Defendants in circumstances where the descriptions target their conduct. Where possible, the descriptions also refer to clearly defined geographical boundaries.

(8)(b) The Defendants having not been identified, are they in principle, capable of being identified and served with the orders: *Canada Goose* at [82(1)] and [82(4)]; *Wolverhampton* at [221]?

95. Shell has taken active steps to identify persons falling within the PU description and indeed there are now 14 Named Defendants¹⁵ who have been joined to the Petrol Stations Claim.

96. In line with its duty to the Court, in the event that final Orders are made, Shell will continue to undertake to join any other persons identified as falling within the PU description to the relevant order as soon as reasonably practicable, following the provision of their names and addresses by the police. The position remains as found by Hill J at [169]:

“when people take part in protests at the relevant sites, they are, in principle, capable of being identified and that there is a process in place focussed on achieving that. Such persons can then be personally served with court documents. In the meantime, effective alternative service on the Persons Unknown Defendants can take place in a manner that can reasonably be expected to bring the proceedings to their attention.”

(9)(a) Are the terms of the injunctions sufficiently clear and precise: *Canada Goose* at [82(6)]; and *Wolverhampton* at [222]?

97. The Claimant seeks final Orders on materially identical terms to the previous orders which have been carefully considered on a number of occasions. The original terms were varied in some relatively minor respects by Hill J and she accepted that the terms of the Orders were sufficiently clear and precise (at [154] – [156]). The terms were reconsidered and approved by Cotter J in April 2024 at [55].

9(b) Do the terms of the Orders only include lawful conduct if there is no other proportionate means of protecting the Claimant’s rights: *Canada Goose* at [78] and [82(5)]; and *Wolverhampton* at [223]?

98. Hill J found [at 153]):

“Each injunction contains an order making clear that it is not intended to prohibit behaviour which is otherwise lawful. To the extent that it does, the same is a proportionate means of protecting the Claimant’s rights for the reasons given under sub-issue (10) below.”

99. The relevant reasons are those set out under sub-issue (5) above: see also *Hill Judgment* at [171]—[180] and paragraph 10 above.

¹⁵ Shell now invites the court to remove D3 following the provision of an undertaking, as set out above.

(10) Scope of the Order: do the prohibited acts correspond to the threatened tort: *Canada Goose* at [82(5)]; *Wolverhampton* at [222]?

100. The prohibitions in the final injunctions mirror the anticipated torts identified in the Claims in the same way as previous orders. The Court is invited to adopt the reasoning and conclusions of Hill J at [150] – [153] (as adopted by Cotter J at [54]).

101. The question of whether the terms of the Order properly reflects the elements of the tort of conspiracy to injure (the Petrol Stations Claim) was considered and dealt with at the contested 2023 Review Hearing¹⁶. Hill J found the acts prohibited in the Petrol Stations Order correspond to the torts underlying the overarching tort of conspiracy to injure and necessarily amount to conduct that constitutes the tort of conspiracy to injure, when the injunction is read as a whole (at [151]). She determined the language in the Petrol Stations Order was appropriate: at [152] [AB/3/48]. The language in the present draft is the same.

(11)-(12) Do the injunctions have clear geographical and temporal limits: *Canada Goose* at [82(7)]; *Wolverhampton* at [167(iv)] and [225]?

102. As to the geographical limits (see Cotter J at [56]),
- a. the extent of the Haven and Tower injunctions is made clear by the plans appended to them;
 - b. in respect of the Petrol Stations injunction, the geographical area was revised by Hill J to more clearly delineate where the scope of the injunction ends and the public highway over which the injunction does not apply begins. The Court is being asked to continue the Order on the same terms and is invited to adopt the reasoning and conclusion of Hill J at [159]. The injunction applies to those “*directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt to a building within the Shell petrol station*” and Hill J found that that wording renders the Petrol Stations Order sufficiently geographically specific as it makes it clear that the area of focus is the petrol station forecourts.

¹⁶ The Claim Form and Particulars of Claim have been amended to mention the torts of trespass to land, trespass to goods and nuisance and clarify the pleaded case in response to [124] of the Hill Judgment [MB/L/7627].

103. As to temporal limits, Shell seeks a final injunction for a period of five years¹⁷ with a backstop of 23:59 on 12 November 2029, subject to annual review: see draft Order at [SB/6]

(13) Service / Have all practical steps been taken to notify the Defendants: HRA1998, s.12(2) / Compliance with requirement to ‘advertise’ the application in advance and give effective notice: *Wolverhampton* at [226]-[227]?

104. The proceedings, the evidence and the draft order have been served on PUs by alternative means which have been considered and sanctioned by the Court: see section B above.

105. The evidence shows that Shell has complied with the service requirements and with s.12(2) HRA 1998 in respect of all Defendants.

(14) The right to set aside or vary: *Wolverhampton* at [167(ii)]

106. The Orders provides the PUs with the right to set aside or vary the injunction on 48 hours’ notice.

(15) Review

107. The Orders provide for an annual review, which is consistent with other orders granted in similar contexts.

(iii) Conclusion

108. For the reasons set out above, it is submitted that it is appropriate to extend the injunctions in the manner sought by Shell.

G. ALTERNATIVE SERVICE PROVISIONS AND PROPOSED VARIATIONS

109. The alternative methods of service which have already been endorsed by the Court in relation to the Defendants remain applicable and the Court is invited to expressly continue such methods.

H. CONCLUSION

110. For the reasons set out above, it is submitted the continuation of the injunctions is necessary to protect against the unlawful protest action being resumed. The

¹⁷ This is consistent with comments made by a number of environmental groups demanding the UK government end the extraction and burning of oil, gas and coal by 2030: See paragraph 39 above and [C/3/16; 319]; [PRB/49/4016].

continuation of the injunctions also provides the police and Shell with the ability to take swifter and substantive action if and when such unlawful activity does resume.

111. In the circumstances, Shell invites the Court to grant the final Orders sought, or such other orders as the Court thinks fit.

MYRIAM STACEY K.C.

JOEL SEMAKULA

LANDMARK CHAMBERS

16 October 2024

Claim No: QB-2022-001241 (“Haven Claim”)

Claim No: QB-2022-001259 (“Tower Claim”)

Claim No: QB-2022-001420 (“Petrol Stations Claim”)

IN THE HIGH COURT OF JUSTICE

KINGS BENCH DIVISION

B E T W E E N :

(1) SHELL U.K. LIMITED

Claimant: (QB-2022-001241)

(2) SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED

Claimant (QB-2022-001259)

(3) SHELL U.K. OIL PRODUCTS LIMITED

Claimant (QB-2022-001420)

- and -

PU AND ORS

[more fully described in the Relevant Claim Form]

Defendants

CLAIMANTS’ SKELETON ARGUMENT
