Case No: QB-2022-001259
QB-2022-001420
QB-2022-001241

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 17 April 2024

BEFORE:

MR JUSTICE COTTER

BETWEEN:

(1) SHELL UK LIMITED
(2) SHELL INTERNATIONAL PETROLEUM LIMITED
(3) SHELL UK OIL PRODUCTS LTD

Claimants

- and -

PERSONS UNKNOWN

Defendants

MS M STACEY KC (instructed by Eversheds Sutherland) appeared on behalf of the Claimants
MR LAURIE the Eighth Defendant appeared in person

PROCEEDINGS

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(Official Shorthand Writers to the Court)

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(10.37 am)

MR JUSTICE COTTER: Good morning, everyone.

MS STACEY: Good morning, may it please you. I appear for the claimants in this matter; Mr Laurie, who is the eighth defendant, appears in person.

This is the hearing --

MR JUSTICE COTTER: Just bear with me one second.

MS STACEY: This is the review hearing which has been listed pursuant to paragraph 17 of Sewell J (Inaudible) March.

MR JUSTICE COTTER: Yes.

MS STACEY: We are seeking a short continuation of injunctions granted by Hill J last year, and directions for a final hearing.

My Lord, before I kick off, could I just run through some housekeeping.

MR JUSTICE COTTER: Mm-hmm.

MS STACEY: What we have, and what I hope your Lordship has, is a set of hearing bundles. Does your Lordship propose to deal with these electronically or in hard copy?

MR JUSTICE COTTER: I've done both, but we'll do hard copy to start off with.

MS STACEY: Okay. So we have I think about 15 hearing bundles which were provided in hard copy. Some of the referencing, my Lord (Inaudible) work out has gone awry in relation to Mr Pritchard-Gamble's second witness statement, you may have noticed when looking at it and some of the references to the exhibit. I have a corrected set that you can swap out, which might make cross-referencing a lot easier for your Lordship.

MR JUSTICE COTTER: I'm all right for the moment. I have read I think as much of the paperwork as I need to at this stage and have managed such difficulties as they exist.

MS STACEY: I am grateful.

MR JUSTICE COTTER: Yes.

MS STACEY: The other update, if you like, to housekeeping is that we have a further witness statement Oldfield 9. The job of that witness statement is to satisfy the court that the latest documents have indeed been served. That's the application

notices in terms of service, the draft orders, the skeleton argument, notice of hearing, and that's been provided.

It was only completed very, very late last night, my Lord, so the schedule addresses haven't yet been redacted.

MR JUSTICE COTTER: Yes.

MS STACEY: But that means we haven't yet provided it to Mr Laurie, but we have explained the position to him.

MR JUSTICE COTTER: Yes, okay.

MS STACEY: I have an unredacted set which I can hand up to your Lordship, unless you would prefer to wait for the redacted version.

MR JUSTICE COTTER: No, I'm happy to have a version with the names on. I don't need a redacted version.

MS STACEY: That's Oldfield 9, that completes the documents.

Your Lordship should also have a supplemental bundle --

MR JUSTICE COTTER: I do, yes.

MS STACEY: I am grateful -- a skeleton argument from us, and an authorities bundle.

MR JUSTICE COTTER: Yes, I have had those.

MS STACEY: We have also recently sent electronically a table of witness evidence that was prepared in order to help your Lordship navigate the various witness statements in the bundle --

MR JUSTICE COTTER: Well, I have done this, and I will hear Mr Laurie, but I have to say I think I should state at the outset that my view of a review hearing of this nature is pretty much aligned with Cavanagh J in *Transport for London v Lee*. I don't exactly know what was envisaged by Hill J when she made the comments in relation to the review hearing, or indeed what Sewell J envisaged. But firstly, Hill J was dealing with a hearing in which the defendants were represented by leading counsel, and a number of arguments were put before her which she determined in a comprehensive judgment.

It was of the nature of an application to set aside the injunction and, therefore, required all of those issues to be dealt with. (Inaudible) Sewell J gave provision within his order expressly for anyone who wanted to make submissions in relation to the review -- I will come on to this in a second -- to give the court advance notice and to set them out.

Now at the moment, I have neither of those, and I am not sure, I am very far from sure, that the court should, in such circumstances, be much inclined to go through the whole of the issues in great detail. Rather, it seems to me, you can ask a very simple question: what's changed and what's likely to change before trial? The answer to the question is: nothing's changed and nothing's likely to change, then that must provide a very clear and firm steer to continuation of the order, particularly when one is looking at the timeframe, which is the same as effectively faced by Cavanagh, who ordered an expedited trial in *Transport for London v Lee*, of a matter of three months, possibly, at the outside, six to November.

But even then -- and I come on to directions, and there is an issue which we'll come on to later on in the hearing about this -- there is an element here of preparing at very significant costs for something which in reality is going to be a repeat of what we have today, which is with very little said against the continuation of the order, given what might be said to be the almost unarguable position that the claimants' rights need a degree of protection.

And I am very conscious of the court's resources, the resources of everybody, in relation to this. Mr Laurie appears -- and I will hear Mr Laurie in a moment as to what he has to say -- but you see the point. It's an entirely different hearing to the one before Hill J --

MS STACEY: I understand fully what your Lordship is saying, but our experience in the Shell cases in particular have been on each occasion last-minute, turned up by interested parties, Mr Simblet KC was represented and was given, I think two days' notice --

MR JUSTICE COTTER: Absolutely.

MS STACEY: So in anticipation of what might transpire, due to the experience we have had in these kind of cases, I am fully with your Lordship --

MR JUSTICE COTTER: It's not a criticism in any way, shape or form. It's simply an indication of where I am now, sitting here, and where you are standing before me --

MS STACEY: Well, I am certainly grateful to hear that.

MR JUSTICE COTTER: -- is that I ... I mean, again, and I do this so Mr Laurie understands the (Inaudible) Hill J, or Johnson J, considered these matters in very great detail. And rather akin to the approach of Cavanagh J in *Transport for*

London v Lee, one could say, "I agree with that, I agree with what was said". And also, and I see no reason to depart from anything because nothing, as I have said, has been put before me that materially alters the considerations that the judges faced, and there's been no appeal.

So in those circumstances, reviews of this type are the exception rather than the rule in injunction cases. So against (Inaudible) Mr Laurie understands in the nearly 21 years in which I have been treading the boards as a part-time and full-time judge, I have dealt with an awful lot of injunctions. And what you have very often is an issue hearing, which can be emergency without the other side attending, or can be on notice where you get the chance. There might then be an interim hearing which lasts a short period of time, so there is a chance of a proper argument about whether there should be an interim hearing, or there might just be an interim hearing. But there is then a trial, okay: interim hearing, trial.

You don't usually get built into it a review hearing unless there is some belief that there's going to be a substantial change of fact or law which alters the grounds. So one can think of a number of examples, I needn't really go through them, but the reality of the matter is you don't just stick a review in because your anticipation is that the trial will be the big review of it. That's what it's there for.

Now there has been a practice, there was a practice in these injunction cases of this type, general type of injunction, of letting the sort of final trial disappear into the long grass. The problem, the mischief, then, is that the injunction stays in force without anybody doing anything to say how long it should be in force. And you don't want to find yourself ten years down the line, still subject to injunction, when the whole world's moved on, or not moved on.

So what happened in those circumstances was this system of review. And part of that, and I think -- I don't speak here unrealistically or unreasonably -- was to sort of force the claimants to progress matters one way or the other because they didn't, because they didn't see any need to because they had achieved what they wanted, which was holding the position.

But here I have a trial date, which I'm going to have a review date. This is not the trial. In three months' time, there's going to be a trial. So in those circumstances, the mischief of this ball being kicked into the long grass and there being no review, it's gone. So I'm left here with, I think, a position whereby the

court, Hill J, Sewell J anticipated there may be a root and branch challenge to this injunction at this stage, although I would query why that was at review rather than trial, but park that for a moment. But subject to what Mr Laurie has to say, there hasn't been, in which case I really am starting from, and I -- I have many faults as a judge, but a lack of pragmatism is not usually addressed as one of them.

As I say, I ask the question: since those hearings, and bearing in mind the trial, what's changed and what's likely to change before the trial in the next three months? And I think the answer to that at the moment, from what I have read, everything I have read, is nothing.

MS STACEY: My Lord, I will refer to Mr Laurie. He notified me yesterday that one thing had changed, and it was a matter he wanted to raise before your Lordship.

MR JUSTICE COTTER: Yes.

MS STACEY: (Inaudible) the Public Order Act has come into force and I think he wishes to make submissions in relation to that. But that is a change which I think he relies on in the (Inaudible) of change.

MR JUSTICE COTTER: Okay. Subject to some points I'll come on to, that might be an example of a matter which has changed or might have changed. Fine, and I can sit and hear submissions on that. But subject to that, rehearsal of all of the issues -- sadly, it's just the way it has been. The claimants have been forced -- I don't know whether "forced" is the right expression or not -- the claimants have certainly found itself in a position of having to engage in a very vigorous bout of shadow boxing.

MS STACEY: Indeed. In order to anticipate arguments which may potentially be raised --

MR JUSTICE COTTER: But they haven't been.

MS STACEY: -- doesn't know whether (Overspeaking) --

MR JUSTICE COTTER: Yes, absolutely.

MS STACEY: And that's enhanced in relation to (Inaudible) anything. They're particularly under scrutiny, under the microscope for whatever reason. So that's why we set it out --

MR JUSTICE COTTER: Yes. Well, it has been, and I've had a day to read it, and I have taken the day to read it. So just by way of overview, that is the position, and I will hear Mr Laurie on what he has to say in a moment. But subject to that,

on the material issues as I understood them to be prior to any submissions Mr Laurie wishes to make, subject to those, the evidence persuades me in relation to continuation. I would hesitate to say this, it's very difficult to see on what basis it couldn't.

MS STACEY: No, my Lord, I am with you, obviously. I was proposing to deal -- that takes out the (Inaudible) of my submissions. I was proposing to address service first, ie service of this application, which is comprehensively dealt with in Alison Oldfield's eighth statement, then to take your Lordship to the case of continuation, but it doesn't sound like I'm going to trouble you too much --

MR JUSTICE COTTER: Well, I will hear Mr Laurie, but subject to that -- and you may respond to that -- subject to that and any other issues he wishes now to seek permission to address me on, subject to that, in terms of the shadow boxing element of what you anticipated --

MS STACEY: You have our written argument.

MR JUSTICE COTTER: Because they have very detailed written arguments, skeleton arguments, comprehensively reviewing everything that's gone on. Of course I have read the judgments of Hill J, Johnson J -- not all of the authorities, but the significant authorities you've referred to. I've done my homework, but I don't see -- much as I say the approach -- it's even more streamlined, in my view, perhaps than faced by Cavanagh J in a sense, because there were some material changes he had to consider in relation to *Transport for London* by virtue of the nature of the change. Here --

MS STACEY: Yes. We're seeking an identical order for a shortish period of time. My Lord, the third matter was there is a change, and that's our application for variation in terms of service. I characterise those as relatively minor and proposals which make it more likely to be documents to come to the attention of defendants, but I'll go on to that in a few moments.

MR JUSTICE COTTER: You can, but I have read them as well. I mean, they are pragmatic in the face of this. You can't make the perfect the enemy of the good in relation to these (Inaudible), and I also take again a pragmatic view in relation to this. And I think again from the range of cases, this proposition emerges: concerted action by groups of individuals under the banners of any of these groups of itself requires a degree of coordination. Nothing wrong with that, in the

coordination, I mean. It is highly unlikely in such circumstances that anyone doing so would not become aware of the existence of the material orders.

Now what they seek to do in relation to further gaining information isn't, but that is the backcloth to these injunctions. And it is, in a sense, materially different to the traveller injunctions in that regard, where you may well have what could be described as true and complete ignorance in relation to a particular local authority stance which may be different -- you understand in traveller injunctions (Overspeaking) a lot of those -- materially different. So you have crossed the border from Devon into Cornwall and find that Cornwall's approach to matters and the protection of its sites is very different to Devon.

Now, that's a real problem in service in those cases. I have dealt with it, believe you me, I have grappled with it. It's just not the position here, and that's been articulated by Freeman J clearly, and others, and I think possibly even me in other cases.

MS STACEY: In the *National Highways* case where your Lordship (Inaudible), but it's vanishing unlikely that people involved in this kind of activity would not be aware of the injunction, given the constructive (Several inaudible words). My Lord, you anticipate an argument I was going to make, had you required me --

MR JUSTICE COTTER: I don't, because the reality of the position has to be adopted. Now, there may be a structured, good reason to either attract the review, but in relation to the service provisions, they're very difficult to deal with if one wants to achieve perfection, the perfection of service being very difficult anyway.

You can't, and the reality of the matter is, as you know, that if an individual ever felt that they faced a position whereby they were in contempt proceedings and they had never been served and could validly show to the court -- and this has been established in a number of cases by individuals who didn't know about the order -- then the court will make that finding and the consequences from that flow.

MS STACEY: And the variations we are seeking are simply we don't send the addresses that they no longer reside at. As your Lordship described, that is pragmatic, that we don't have to send emails and multiple attachments, but we simply send a link. And those are what I would describe as relatively minor changes, which are more likely to bring the documents to the attention of the defendants.

MR JUSTICE COTTER: Yes.

MS STACEY: The fourth area which I was proposing to address your Lordship on, and which I will have to, no doubt, (Inaudible) is directions. I will take you to the proposed directions order.

What we have done there is make provision -- given specifically in relation to petrol stations, we have 15 named defendants who have been joined, all of whom may put in defences. I don't think again --

MR JUSTICE COTTER: Well, let's start with that, actually, because it targets in on a concern I have.

MS STACEY: It's the supplemental bundle, my Lord --

MR JUSTICE COTTER: No, I'm dealing with Sewell J's order first off, so if you can turn that up. This is Sewell J's order, Mr Laurie, made in this matter on 15 March, if my memory serves me right -- is that the right date? I think it is.

MS STACEY: I don't think Mr Laurie (Inaudible) has pages, but perhaps I could give him -- I am working electronically here, I could give him my bundle.

MR JUSTICE COTTER: Well, it's -- I have it in numerous places. Core bundle 1, page 14 is where I'm looking at.

MS STACEY: Yes.

MR JUSTICE COTTER: Okay. Now again, I'm speaking here generally and I hope in a helpful way so Mr Laurie understands what I'm driving at here. The judge, Sewell J, was trying to progress the matters to a final hearing, and he also had the order of Hill J at paragraph 6 -- we don't need to turn it up -- about the need for a review, bearing in mind that she had just had a fully contested hearing with leading counsel (Inaudible) arguments. So he set those out, and he dealt with the directions for the final hearing at paragraphs 11 to 21. He says at 11:

> "The claimants are to file any updating evidence in the course of the review hearing, which they have done, do the re-amended Particulars of Claim (Inaudible) as they have done, 13 (Inaudible) so."

He then says:

> "The defendants shall file and serve any evidence upon which they seek to rely by 4 April 2024."

Now, stopping there for a moment, no evidence has been served. But what I rather struggle with is the order of paragraphs 14 and 15. Paragraph 15 is:

> "The named defendants and any other person falling within the definition as persons unknown [the first defendants] who may wish to defend the claims or any of them should file and serve on the relevant claimants an acknowledgment of service no later than 12 April 2024."

Have there been any acknowledgments of service?

MS STACEY: No. But, my Lord, the reason for that, there is a bit of a debate from (Inaudible) J, I understand the (Several inaudible words) is that where you have an order that's containing an alternative service, as your Lordship will know, it has to contain the date by which an acknowledgment of service must be served, and a defence in order for it to be effected.

That's why that paragraph was put in there. They said there would be a date for the acknowledgment of service.

MR JUSTICE COTTER: But that's come and gone --

MS STACEY: I anticipated that would have to be changed at this hearing because -- it is a practical reason, nothing short of that.

MR JUSTICE COTTER: But there hasn't been any acknowledgment of service by any defendant. So as we stand, any defendant who wishes to defend the claim is in breach of paragraph 15.

MS STACEY: Yes, but there's a provision of liberty to vary their reply --

MR JUSTICE COTTER: There is, of course, but I don't have any.

MS STACEY: (Inaudible). Not today, but at the final hearing, between now and the final hearing, someone might wake up -- again, my Lord, it's abundance of caution --

MR JUSTICE COTTER: Well, it is, but I'm afraid I rather take a simplistic view of this: unless we're going to engage in another even more vigorous and furious bout of shadowboxing, we actually need to know what the arguments are and who's going to contest the matter.

MS STACEY: That's what we're seeking to do with the directions that we asked (Inaudible) J to make in the shortened truncated version we were given. My Lord, yes, I suppose I should also mention this: it's not only defendants, but also interested persons pursuant to rule 40.9, and Hill J's hearing was -- it wasn't a defendant who had pitched up and made a --

MR JUSTICE COTTER: No, I have that.

MS STACEY: Yes.

MR JUSTICE COTTER: I have that. But still in relation to this matter, the difficulty is we're going to fall into a position of the court making orders which are breached and requiring, it seems to me, then some sort of application.

So we come on to that, and I will hear Mr Laurie then, because what he tried to do in relation to this hearing is:

> "Any named defendants who wish or may defend the claims should file a defence by no later than 15 May 2024."

Yes? So does that mean I can file a defence even though I have not filed an acknowledgment of service?

MS STACEY: Well, on the face of it, yes.

MR JUSTICE COTTER: Well, that doesn't fly, does it?

MS STACEY: If it helps, my Lord, given the cautious approach that we are content to adopt in order to ensure that no future judge, who is perhaps not as pragmatic as your Lordship, takes a different view with the intent to extend the date in paragraph 15 as part of the current directions --

MR JUSTICE COTTER: Well, I don't have a difficulty with that, and I understand it. However, in the event that there is no response by any defendant at that date, no defence, nor acknowledgment of service, no application by any interested party -- I keep on using this phrase, but isn't the danger that you find yourself expending very considerable costs and putting the court to a two-day and a half day listing when the reality of the matter is there is no need and it's not proper.

Because the normal way in which any civil set of proceedings proceeds is: claim, response, understanding of response, if necessary reply, hearing, truncated. And if there isn't a response to this, and there was of course before Hill J, but if the reality of the matter is the view has been taken -- subject to what Mr Laurie wishes to add -- that on those arguments, the defendant is simply not going to win before the court -- they tried them, they've not won, did not appeal them -- so they're now going to be rehearsed or revisited; and that a view has been taken, I know not, that based on the evidence and what might be thought what was described realistically, if I may say, with deference to the Supreme Court as the obviously arguable position in relation to the claimants' rights on these positions, there's not going to be much chance of defending the final trial.

MS STACEY: No. I should probably explain why -- there are two other things that might need to be considered in the mix. Firstly, in terms of your comment about costs, we're only put to additional costs, if indeed we receive defences and have to file evidence in response to those. So the timetable's extended to anticipate that might happen. It might not, but it's just simply causing a delay rather than necessarily additional costs.

MR JUSTICE COTTER: It is. But in the event that they don't, I would like the directions tailored in some way to reflect the fact that there is no argument -- now, it doesn't mean that the court doesn't need to be satisfied, it's not a rubber stamping exercise necessarily, it never is, as you know, in final hearings, where other sides don't attend because, for example, an unrealistic, unreasonable or illegal order may be sought -- in wider hearings, not this.

So of course the court has to be assured of that. But subject to that --

MS STACEY: My Lord, I have no difficulty with that, the tailoring that you just (Inaudible). But in terms of if your Lordship is thinking to bring forward the date, that would be a problem --

MR JUSTICE COTTER: No, no, I'm not bringing forward the date -- no, no, I'm sorry. I am interested in jealously guarding the resources of the court and also being able to list this matter, and list it to reflect the issues that are likely to be before the court. If the issues are not going to be before the court in any contested fashion, then these directions and the court's time estimate should reflect that.

MS STACEY: That's extremely helpful. If I can just finish the point on delay that I was (Inaudible) just to make sure you understand where I'm coming from, I don't know whether it features in the evidence. Every time an order's made by your Lordship today, by Sewell J, or an injunction (Inaudible) is made, Hill J and your Lordship today were prepared to continue, we have to put all the notices up at each and every --

MR JUSTICE COTTER: I know -- (Overspeaking).

MS STACEY: -- these people endeavour to do so, that takes about four weeks, I am instructed. So it's for that reason that my clients candidly would rather have a longer continuation whilst progressing the matter; so treading a fine line between not being criticised for not getting on with it, and not having too short a period which means they are required to duplicate that process too quickly.

These directions we have come up with, if you like might mean -- so it's for that reason, I was concerned that my Lord was proposing to bring the date forward.

MR JUSTICE COTTER: No, I'm not. No, no, no, no, no, I'm not. What I'm trying to do, I make it clear, is I will hear and determine any arguments I should hear and determine. If there isn't an argument, I don't want to waste valuable resources of the court, or indeed of anyone, in an exercise which is in reality you providing a skeleton argument which is not addressed in any detail, a huge amount of work, the court spending a day/a day and a half reading it, setting aside two and a half days, to the prejudice of other matters which are before the court when the reality is it's just not needed.

MS STACEY: I am sure that can be -- currently the draft order's at paragraph 13, my Lord, which is at page 7 of the supplemental bundle. That provides that the matter should be listed for a final hearing on the first available date after 24 July with a time estimate of two and a half days. That can be amended in order to cater for the scenario that your Lordship --

MR JUSTICE COTTER: Yes, you could have a position and -- although it wouldn't be necessarily me trying it, you can have a position where a judge would -- and I used to do this time and time again -- retain light-touch case management of this, which would mean that if things needed to be changed without great cost, they could be, but that case management is designed to enable the overriding objective to be achieved, which includes the knock-on effect on everybody else of wasting court time.

MS STACEY: That doesn't, I suppose, deal with the 48 hours provision, which is the provision ready for any party who wishes to be heard to make an application in that period. The 48 hours reflects Hill J. We tried to have that period extended so we can have (Inaudible) indication to know where we stood, but she wasn't prepared to extend that --

MR JUSTICE COTTER: Well, here I am, I haven't had anything within 48 hours, which is one of the matters I want to raise with Mr Laurie. I've not had anything. And another clear aim of the entire civil justice system is to -- for want of a better phrase -- avoid ambush and give time for preparation, and that's why notice is required. I don't have anything and at the moment, and I will come to this,

Mr Laurie doesn't have any right to address me because Sewell J's provisions are not being complied with.

Now, he might persuade me otherwise, but I absolutely understand the sensitivity of this matter, but there needs to be a balance struck. It effects an awful a lot of people and it's of huge significance to those involved. I absolutely understand that, but there needs to be a balance struck. I would, by some thought during the course of today as to how the directions can be tailored such that the lack of any engagement, if I can put it this way, is reflected and dealt with accordingly, by me if necessary, even though I won't be trying it necessarily, it doesn't need to be reserved to any judge --

MS STACEY: Can it be reserved to any judge?

MR JUSTICE COTTER: Very difficult (Inaudible). The reason -- there are significant difficulties with reserving it to any judge. What would listing do if listing had one of the judges that had been involved in it or knew about it, then they would try and do their best, it's sort of soft touch. And I'm an example of a judge who deals with these injunctions, but I happen to be in a week-long gap between one nine-week murder and another two-week murder starting in -- I just happen to be available to deal with these. And where I would be in July, I wouldn't have a clue; and you wouldn't want to delay your hearing because the other thing as well is you haven't put dates in.

So it's very difficult, but it will not be difficult to list the matter in front of a High Court judge, subject to vacation, which we can deal with. That's not the problem. What I'm more interested in is what that judge deals with. I have given you my view, so at the moment when I came into court, I didn't have anything complying with paragraphs 20 or 21. I had read everything that I thought I needed to to prepare for this hearing, and frankly had reached a very firm provisional view on a number of matters.

MS STACEY: My Lord, that's very helpful. I don't suppose -- could I ask you to turn up the draft directions, given what you have just said because that impacts one of our proposed directions. Supplemental bundle, tab 1, page 7.

MR JUSTICE COTTER: Yes.

MS STACEY: My Lord, the direction starts at page 6, paragraph 9.

MR JUSTICE COTTER: Yes.

MS STACEY: I took your Lordship to paragraph 13, which is listing). Then you will see 16, and perhaps this is overly generous, given what your Lordship has just said. It says:

> "Any defendant who has not complied with paragraph 9 [that's the defence paragraph] and any other person who claims to be affected and wishes to therefore discharge it, shall apply to the court for permission to be heard, must inform (Inaudible) than 48 hours."

So that doesn't really grapple with your Lordship's point about if you don't satisfy paragraph 9, ie file a defence, you don't get much clarity unless we're within the 48-hour period before the listing.

MR JUSTICE COTTER: Well, it's very difficult, isn't it? I mean, it's very difficult indeed to precisely tailor these to take account of the concerns that are set out, but also at the same time potentially reflect -- which I suspect of course has been in the mind of everyone dealing with it so far -- the possibility of someone who would fall in the category of currently persons unknown who wishes then to engage in the proceedings. I understand that as a proposition, but here's the but: they haven't to date.

MS STACEY: No, and it's being going on for quite some time.

MR JUSTICE COTTER: It's been going on for quite some time, exactly. So my view in relation to this is slightly tougher.

MS STACEY: I would propose bringing the 48-hour period back, so to two to four days. So you have the defence date, then you have a period after the defence date to enable them to set aside if they're in breach; and after that is the cutoff point and then you can list it accordingly.

MR JUSTICE COTTER: Yes.

MS STACEY: I will have a think about what that date --

MR JUSTICE COTTER: That's more what I had in mind.

MS STACEY: I am grateful.

MR JUSTICE COTTER: And again, and I make it absolutely clear: the primary driver for this is the court's desire to manage its limited resources because of the pressures not to put what would be on the current listing three, probably four, days of High Court judge time aside which is not needed because it's four days of High Court judge's time in the enormous pressures we face in different jurisdictions.

And you will know -- and again, Mr Laurie, you will understand from the papers -- the pressures on the criminal trials, other things. To say four days, which is just not needed, it's not exactly a disaster, but it's something that I at this stage would be wrong not to be thinking about very carefully.

MS STACEY: My Lord, that needs to be very clearly articulated in the order. Sewell J, if I may say so -- I took (Inaudible) Wolverhampton where he says cases of this nature, as they are very rarely very much contested (Inaudible) it didn't necessarily apply to a case where there's a conspiracy to injure.

So we will go away --

MR JUSTICE COTTER: Well, we can think about that element. But coming back to where we are now, which is why I wanted to do this, to say at this stage is because if we carry on on the order -- so this is the order of Sewell J -- we'll come to the point now, Mr Laurie's been very patient -- in which we have what he tried to do. This is what Sewell J tried to do:

> "Skeleton arguments to be filed two days before the review hearing."

Now at that stage, there is no doubt he was envisaging anyone who was going to seek to challenge in a substantial way the injunction would have filed an acknowledgment of service no later than 12 April, and filed any evidence that they were going to rely upon by 10 April. Then at paragraph 20:

> "Any named defendants who first comply with paragraphs 14 or 15 [so we can see those are the points I have just referred to, the acknowledgment of service and the evidence] will need to apply for permission to be heard at the review hearing."

Because of course -- again, (Several inaudible words) that I was -- just not joined a party, just not come along prior:

> "But if they wish to do so must inform the claimants' solicitors by email to the addresses 48 hours before making such application (Inaudible) and the basis for it."

MS STACEY: Mr Laurie did that by email. He told us he was -- that's what I was referring to earlier. He didn't (Inaudible) email saying he proposed to attend and set out the basis of what he was proposing to --

MR JUSTICE COTTER: Right, okay. But in relation to that, it is still an order which says that permission must be applied for at this hearing because the procedural

requirements have not been complied with: no acknowledgment of service and no evidence. Now the acknowledgment of service is -- advanced (Inaudible) proceedings, but the evidence. What I have, Mr Laurie, then is to consider -- you want to make some submissions to me -- firstly, should I permit you to do so, bearing in mind what the judge tried to do?

So what do you say about that, do you get me? Do you understand what I'm saying?

MR LAURIE: Yes, I understand what you're saying.

MR JUSTICE COTTER: He tried as best he could -- no, sit yourself down, there's no need to stand up for me. Stand if it's easier, sit or stand, whatever you want to do, I don't mind. What he was trying to do -- not me, what he was trying to do -- was to get somebody to engage before the hearing with evidence and acknowledgment of service.

MR LAURIE: I get that. But having said that, I also -- first of all, thank you for the explanation, I understand the process a bit more than I did (Inaudible). But I did sit through the whole of the last hearing and obviously didn't understand it properly, so that's obvious.

I do get a lot more about the process now and the understanding of what the different dates -- whatever reason, I thought I had done, but --

MR JUSTICE COTTER: I mean, you notified -- the way he drafted it was to -- because you have two. They knew, I didn't.

MR LAURIE: So -- I mean, I'm an engineer, I'm not involved in legal things at all -- well, I was, but only on an engineering basis, advising people on engineering matters, and I would hope that my background is as a pragmatic engineer, if you know what I mean.

MR JUSTICE COTTER: Yes. Most engineers are pragmatic, Mr Laurie.

MR LAURIE: Sorry?

MR JUSTICE COTTER: Most engineers are pragmatic.

MR LAURIE: I wish.

MR JUSTICE COTTER: Really?

MR LAURIE: Anyway, yes ...

MR JUSTICE COTTER: All right. So you didn't really understand (Overspeaking) what paragraphs 14 and 15 were driving at, and you thought if you gave 48 hours notice to either side, you would be entitled to do it. Is that it?

MR LAURIE: In a nutshell.

MR JUSTICE COTTER: All right, okay. Do you have a document or something --

MR LAURIE: I've got no documents, I've just got what I thought -- it's just what I thought about and it's very quick. It's not, you know --

MR JUSTICE COTTER: Speak -- I'm going to let you, yes. Again, anyone with any acknowledge of the way I have conducted these hearings in this and other cases of a wide range knows that I tend to listen to people rather than shut them out. But you all understand that I'm doing so by way of effectively letting you get off not having complied with what the previous judge was asking -- yes, well, all right.

But again, you've not heard me, and it may be a neat point that you are about to tell me about and I will listen and deal with. But you will forgive me for making just a generalised point beforehand, which I say in these cases, and I have said them in a range of injunctive cases from HS2 through to these, and I'm sure you are familiar with this.

What I think about the underlying merits of anything is utterly irrelevant and must not in any way colour mine or any other judge's approach to this. It's strictly the rule of law, so it really has to be addressed to the relevant legal principles. And I've heard and allowed people to say passionately and with great belief why they do what they do, yes?

But the reality of the matter is if it's not me, it will be somebody else in exactly the same position will say exactly the same thing: it doesn't matter what I think about that, I'm not allowed to let that colour my approach. So with that, fire away.

MR LAURIE: So I wasn't going to make a big speech about --

MR JUSTICE COTTER: No, forgive me for saying that. I tend to say it --

MR LAURIE: (Overspeaking) I wasn't going to (Inaudible).

MR JUSTICE COTTER: All right, on you go.

MR LAURIE: Maybe there will be a day for that, it's not my style anyway.

MR JUSTICE COTTER: Right, fire away.

MR LAURIE: Okay. Very simply put, when the injunction -- and I'll just quickly say (Inaudible) as well we didn't know about the injunction or anything (Inaudible).

So -- but the point I was very simply going to say is that actually things have changed since the injunction was made two years ago, and the protection -- under the protection that Shell have from the law now is substantially different in that section 7, section 12 and section 14 are considerably different now from when they were. And there are various other elements of the law, like not locking-on and things like that, that give them protection that they didn't have at that particular time and that they do have now, and I was just going to suggest that they should rely on the law like everyone else.

MR JUSTICE COTTER: So it is your submission that criminal law gives sufficient protection from all or potential infringements of the claimants' right to mean that the injunction is unnecessary; is that it?

MR LAURIE: Well that -- absolutely, that -- for instance, that the police now are (Inaudible) in almost any circumstances and stop things in a matter of seconds, rather than letting things build up in the way they used to, and the penalties are that much higher.

But it does make -- it does change the scene, the protest scene quite a lot, and I have no -- you know, I could go on and on about it, but I think that at the end of the day, that's the very simple point and, you know, at the very least it bears consideration.

MR JUSTICE COTTER: I mean, I confess, I'm not in the position of giving any false impression. I'm not as clear in my mind about material dates for changes in the criminal law as I probably should be.

MR LAURIE: It happened substantially after this injunction --

MR JUSTICE COTTER: Mm-hmm, I know, I'm just saying I don't --

MR LAURIE: (Overspeaking) it came I think it was --

MS STACEY: September 2023.

MR LAURIE: September 2023, I think it was. There was two, there was one came in force in April, and then there was one update (Inaudible) that was in April that did the locking on and the section 12 -- then section 7 came in in April. Section 7 is a very substantial protection from ... I'm very, you know --

MR JUSTICE COTTER: Yes, I understand what you are saying, and that is a perfectly lucid argument -- perfectly lucid, perfectly (Several inaudible words) if you get me. So I understand that argument.

MR LAURIE: Can I also say that I'm very much of the opinion as well if you can come to the conclusion on this quickly, then let's come to a conclusion on it quickly and move on to the -- get the whole thing sorted out rather than dragging on.

MR JUSTICE COTTER: Yes. I mean, the nature of matters changes by virtue of the orders -- sorry, I'm thinking -- so does for obvious reasons the nature of the activities generally which seek to alter private and public attitudes to fossil fuels; whether they fall one side of lawful or the other side, they change.

Okay, all right. That's helpful, thank you. All right. I'm not repeating, it's (Inaudible) out of the blue and I'm still thinking about that. So I'll hear from Ms Stacey, and then I may have a little bit of a think about it. Yes.

MS STACEY: My Lord, yes.

The Public Order Act creates new offences relating to public order. That's not disputed. In doing, it, if you like, provides another option. It may be that in certain cases, private individuals wish to rely on the police; in other cases -- but they do not need to do so. The Public Order Act defences is reliance on police intervention and police prosecution. So the individual who can maintain a civil cause of action is not (Inaudible) in the driving seat. The Act is not to the exclusion of civil rights and a claim that you can demonstrate cause of action to bring their own claim have a right to justice if they choose to follow the civil route.

Testing this way: all the injunctions which were recently granted -- I think we list them at paragraph 27 of our skeleton argument, all of which were post Public Order Act -- were considered to need to be revisited in light of that Act. It would place an enormous burden on the police, potentially, and it would not be just and convenient, in my submission, for that to be the outcome. The laws work together and the fact that one option is available does not preclude the (Inaudible) on the other.

By of an example, my Lord, that you may be familiar with is the (Inaudible) Warwickshire injunction. That was an injunction obtained by the local authority pursuant to its local government powers, it had additional powers to obtain injunctions in certain circumstances. The land which formed the subject of that injunction overlapped with land which Valeria(?) owned -- this is (Inaudible) the same kind of area -- didn't preclude Valeria from deciding that it wished to be in

the driving seat and secure its own judgment, notwithstanding the overlap. The same point applies.

I say it's a non-point; in this case Shell has a legitimate interest in securing its own judgment to prevent (Inaudible) activities on its land. And the evidence more than bears out the fact that they reasonably apprehend a serious risk that the activities would resume if the injunctions were not in place in relation to both persons unknown and in relation to named defendants who have refused to give undertakings.

MR JUSTICE COTTER: I mean, in the civil law generally in a range of different areas over the years, the courts have granted injunctions to prevent conduct which would be otherwise criminal.

MS STACEY: Indeed they have.

MR JUSTICE COTTER: The reason I am pausing is I'm trying -- that much of course is clear. To consider -- what I can remember of any court that has considered the issue of principle in relation to the granting of injunctions -- I mean, whole hosts of legislation are based on this. I mean, in the behavioural sense --

MS STACEY: My Lord, if I may, the point was raised at the outcome of the *National Highways* injunctions -- I think it was Bennathan J's judgment, I can't remember which one right now, but in his judgment, there is a paragraph which -- the submission was that claimants should leave it to the police. I think that was in the context of highways, and there was public (Inaudible) to the land. It wasn't purely private land, there was a public area, public nuisance, should be left to the police, and in his judgment he said that wasn't the answer.

The claimants are entitled to rely on their own civil rights, as well as in circumstances where there are alternative options.

I can probably easily find over the lunch time adjournment that judgment and that reference --

MR JUSTICE COTTER: One of the difficulties of course is that police action is **ex post facto**.

MS STACEY: Yes.

MR JUSTICE COTTER: **(Pause)**. I'm thinking, Mr Laurie, again so you -- and I'm going to rise to think about it -- to put it in engineering terms, it rather is a point

which cuts across engineering practice over a long period of time. So I'll give you an example out of any of the current arenas in any of the (Inaudible) injunctions.

So the government had in 2014, the police -- anyway, it doesn't matter -- an Act that sought to deal with antisocial behaviour in the civil courts, providing a range of ways in which the civil courts could grant injunctions to restrain antisocial behaviour, a very significant percentage of which would be criminal. Now forgetting the rights and wrongs of it -- which I spent two happy years debating before writing a report to the Civil Justice Council on the whole issue -- the whole basis was that you couldn't just leave it to the police because it just didn't work in practice. The only way that the police could involve themselves was subject to resources after an event had occurred and with the limitations that they had; whereas an injunction acts prospectively to prevent the damage.

I've put it in a very simple fashion: if you live next door to somebody who's violent, and they've been violent towards you and other neighbours, you then get an injunction to prevent them being violent. They punch you when you can call the police, but no one will say, "Well, you can call the police if he punches you", they stop him. Because once you've been punched, you can't be unpunched, if you follow me. So the courts work on the basis that we will prevent him from engaging in that conduct, even though were he to engage in it, it would potentially give rise to criminal activity.

And that's the way the courts have worked. It's this difference between prospective and retrospective remedy for rights, do you follow me? The police can't come to your house and say, "I don't want you to go along to the Shell forecourt, wherever, and smash up a pump", an example. They can't, they just don't. The court can prevent you -- some court can prevent you from doing it by way of an order warning you as to what happens. But once the police can do, of course, is once you've done it, they can come along and arrest you.

But I think really the only basis upon which it seems to me your argument progresses is by -- forgive me if I have it wrong, you can tell me if I have this wrong -- the fear of the criminal law sanction will apply equally as well as the civil injunction to restrain people's behaviour. Do I have that right? In other words, if I know if I do something I risk criminal action, I won't do it, therefore a civil order stopping me from doing it is unnecessary; is that it?

MR LAURIE: Yes. I mean, the example of a section 7, such a, you know, possible one year in prison, we're getting into the realms of breach of an injunction there and that's a similar kind of punishment. So if it works on one side, it works on the other, surely?

MR JUSTICE COTTER: Yes, but you get the point about the **ex post facto** business.

MR LAURIE: I do take -- I do take the proactive point. I may not quite agree with you that the police would be able to intervene and stop people from having a protest, but that's by the by. But I understand what the intent is, but when the result is the same, surely the deterrent is the same?

MR JUSTICE COTTER: Yes, it's not -- the way the civil courts have approached it historically, and it's such a fundamental and basic concept, that's why -- to give you an instant case, it's a bit like asking you to find in an engineering manual a concept which is so fundamental I wouldn't put that in the manual. It's sort of like that point, Mr Laurie, if you follow me, it's a fundamental principle.

So what Ms Stacey is saying is it happens in all these cases in a wide range of circumstances, but not just in these activities but in the whole host of circumstances where conduct -- people come before the courts concerned about conduct of individuals which would give rise to potentially criminal charges.

And believe you me, as we sit here now, injunctions will be granted up and down the land in county courts under the 2014 Act to prevent behaviour which is criminal -- antisocial behaviour, not behaviour that's caught by any of these injunctions in that sense, straightforward what you would describe -- you've been speaking to (Inaudible) says is antisocial behaviour related to drunkenness, homelessness, drug abuse, alcohol abuse. All behaviour is potentially -- so the same argument would work that way, if you follow. That's the problem I think you have, and it doesn't mean I don't have to reflect on it because I do, I take your point.

MS STACEY: My Lord, can I make three points?

MR JUSTICE COTTER: Yes.

MS STACEY: The first is that section 7 -- I've just had a look at the legislation -- only covers infrastructure. So in terms of the sites that will be subject to these claims which cover Haven, which is the terminal jetty, but not the Tower, the global headquarters, or the petrol stations.

MR JUSTICE COTTER: Yes.

MS STACEY: That's the first point. The second point in terms of deterrent effect, it's not the same for two reasons. There's no committal, if you like, your prospective point. Once you get the injunction, you (Inaudible) in the form of a committal and that's something you can prosecute/enforce. And secondly, it's reliant on resources. In our experience, we actually obtained the injunctions initially because the police asked us to provide assistance to them in view of the onerous burden they are facing. That's the second point in terms of deterrent.

And thirdly, I would ask your Lordship to reflect on the nature of the harm which kind of underscores the need for --

MR JUSTICE COTTER: Well, is it remedial harm? I mean, that's the problem --

MS STACEY: That's the point.

MR JUSTICE COTTER: That's why I am saying, that's what I was explaining to Mr Laurie about the point of -- it seems to me that for the argument to work, it has to be on the basis of deterrent. I think he understands that if you are facing a criminal prosecution, you won't do it, and that means the civil order becomes otiose, you don't need it.

MS STACEY: Yes. But you may face a criminal prosecution or you may not, that's the point. Whereas if you have an injunction, it can be committed, the claimants can, they're taking control of the process to enforce an injunction because it has obtained that protection, and it doesn't need to rely on the police having sufficient resources, time and inclination to do so.

And as I say, legislation is limited to the extent of the (Inaudible). If your Lordship would like me to get the passage in the judgment, I can try and look that up --

MR JUSTICE COTTER: Of Bennathan J?

MS STACEY: Yes.

MR JUSTICE COTTER: I can do that.

MS STACEY: I don't know which judgment it is, but I can certainly --

MR JUSTICE COTTER: I can have a think about that as well -- where are we now?

Right, okay. That point I need to think about, okay? I don't intend in the break traditionally in these cases to reserve judgment. As Mr Laurie says, you have to get on with these things. I don't have any difficulty with the content of the eighth

statement -- I'm not entirely familiar with the ninth statement, but I don't think it will materially alter my view if I read that -- of Ms Oldfield, and I don't have any problem with the service provisions.

I do want some thought to be given to the directions and how they can be crafted in relation to that. On that, Mr Laurie, I want to explain the difference between what I am doing, a review hearing, and a final trial, okay?

In injunction hearings when you get an interim injunction, and a review hearing, it's not the final trial. So the judge has to look at a range of different principles in operation, and there are all sorts of phrases -- I'm not a great fan of holding the ring, whatever it is, but in other words preserving the position without finally determining the arguments before a final trial.

So if I were against you at this stage, it would not be the final word on your argument, right, because I'm not the final trial judge. I have to consider, so what Ms Stacey has to persuade me of, is not her final argument on the subject, she just has to persuade me at this stage the position is I should continue the injunction, bearing in mind that argument.

Putting it very simply: if there is a knockout blow to these, I shall stop it now, you have satisfied me there's a knockout blow. If I am not satisfied there is a knockout blow, then what I may do is continue the injunction, but it doesn't prevent at a trial the argument being rehearsed, reconsidered, with all due respect better and more comprehensively argued with more preparation time and responded to, and a judge who may disagree with me.

So it's not the final trial, so that's an additional feature at this stage. Now why is that particularly important? One because it affects the approach I have to these principles. I don't have to -- if I am not satisfied it's a knockout punch -- I'm not using easy legal language here -- then I may continue the injunctions. If you want to run the argument in more detail, then there will be provisions to allow that. But what I've been trying to say earlier -- and that's fine, that's your right, subject to engaging in the process.

What I must try and avoid is no one really disputing many elements of this, an awful lot of time of the court and expense of the claimants being set aside and wasted for issues that are not contested by the defendants because they may think we should be able to win that, which might be a realistic and legitimate view

without making a concession. Because what tends to be different about private litigation between individuals is when someone's going to lose, they have a tendency to sort of accept it, I'm not going to win this so I'd better close down my exposure to costs or whatever, and say right, I'm not going to win it, and the claimant knows where they are.

A lack of engagement means the claimant has to worry about what might be said that may never be said, and I have -- you have seen the skeleton argument, beautifully presented. The reality is that as she heads off for a cup of coffee whilst we're thinking about this, Ms Stacey's thinking I wish I knew I had that judge before I started and I could have said all this because I would have done it -- I would have watched an awful lot more television had I known that this is what's going to happen.

It's all beautifully presented, but the reality is it's a review hearing because she's shadowboxing. She doesn't know whether she's going to get Mr Simblet, she doesn't know whether she's going to get another eminent pro bono silk who's going to -- or other lawyer, some excellent counsel who have contested a range of issues in these matters on a range of bases. She has no idea. So she gets everything ready to prepare for a battle that doesn't come, and I'm anxious to avoid that.

MR LAURIE: Okay. Can I suggest that it seems to make -- I'm assuming this morning that you're going to come back and say it's a knockout blow and I have to abandon everything and walk away from it, so let's just accept that. I've made my point and move on.

MR JUSTICE COTTER: I think I should -- it's ... it's sufficient of a point that I want to think about it, and I will say something about it.

That's what I'm here for is to consider it, and I have to be satisfied -- you say (Inaudible) it's sufficient of a point that it requires me to think about it. It is certainly not one which I can just say yes, that's entirely hopeless. No, I'm going to think about it, but I stress it is still an interim review hearing, it's not the final hearing. So it's a tough old battle for you at this stage than it would be at the final trial, if you understand what I mean, because you could argue at the final trial that a permanent injunction was not required with other arguments in there, that would be stronger than they are here because this is an interim basis, because all I have to be satisfied of is a lower threshold of keeping things safe until there is a final trial

date, and it's only going to be in three months'/four months' time. So it's tougher in that regard, but I'm still going to think about it.

But that's what I want Ms Stacey to think about, and I think it's important for you to think about that as to whether or not you wish to engage further and run that point at the final trial or not, yes? But I want to try to do that with the directions, and the directions are already -- and I'm giving you a general indication from someone who's been in a whole range of work for a number of years, far more sympathetic to the defendants -- you might find that strange here in these cases, than there would be in others.

So if this was an injunction in relation to your next door neighbour and some problem you have with them, whatever it may be, the court would be much more unforgiving about the process, you know, if you didn't do this and this, it would strike you out, wouldn't let you say anything, it would be much tougher. So it's already reflecting the need to potentially allow people who've not been engaging so far to do so.

And I get that, and that's what's happened so far. But I think a balance has to be struck and I'm not sure that the current draft directions do that. It won't shut people finally out, they will be able to apply, but they will have to apply is the point I'm making, which would mean, again so you understand, just in case you have anything to say about this, that if I became a party to -- I was to engage in something that I thought was important in relation to this because of my political beliefs, I wanted to do something which was potentially caught by the injunction, that I thought I had a legal argument that had not been properly canvassed despite all the work that's been done -- and you've just come up with one that's not been addressed today -- there will be a door open to do that. But that door I think should be a clear door and not just a series of doors that go right the way through until -- I've set aside two and a half days with a day and a half's reading with a High Court judge's time.

And I really do want to stress that part of the reason for that is -- if you take me for an example, if I were to put aside for that, it would prevent them sending me to go and do something else. We're a scant resource, properly used, but it's not one of those concerns I am articulating when the truth of the matter is I'm going to go off and play golf, Mr Laurie. It's not like that, you know -- I don't play golf, but

you get the point. It's because we're under pressure and therefore for me to set aside really four days, which is what's currently being envisaged with the time for reading time, I can't see it at the moment, unless something comes up that the court really needs to work on.

What I'm going to do is -- it's now 12.00 -- I am going to have a think about that. What I was going to suggest if I come back at 2.00 --

MS STACEY: And in the meantime, my Lord, I will look --

MR JUSTICE COTTER: You have a look at the order and think about that, I will think about this. I will then envisage giving an ex tempore judgment. What does that mean? I just give a judgment. The alternative is I go away, spend another seven or ten days, then produce a judgment, then the (Inaudible) has to be -- it's just more delay, more costs, more uncertainty, and I can do it faster. It won't be as beautifully polished as if I'd -- but I don't think that's necessary.

MS STACEY: My Lord, what I will probably do is produce a draft of the facts and I will hand that up.

MR JUSTICE COTTER: Yes, you can, but whatever you think's best. We can agree the principles, perhaps, and then there's still further time to -- whatever you think's the best way -- I think it's more important to sit down with those that instruct you and think about the framework of --

MS STACEY: If we get to a position, then I'll (Overspeaking).

MR JUSTICE COTTER: Yes, of what I'm trying to -- the balance I'm trying to achieve. I totally understand why the case has come so far, but I hope everybody understands why I'm coming at it with a slightly different angle.

MS STACEY: No, no, that's extremely helpful, thank you. My Lord, I think that's it for the moment.

MR JUSTICE COTTER: Right, okay, I'll do that. We'll come back at 2.00, and in the interim, Mr Laurie, what I'm going to do is consider what you told me, and have a think about it, okay?

Thank you.

(12.00 pm)

(The luncheon adjournment)

(2.10 pm)

MR JUSTICE COTTER: Does this concern directions?

MS STACEY: It does.

MR JUSTICE COTTER: What I would propose to do is give a judgment in relation to the first issues and then stop and we'll deal with directions.

(Judgment is given)

MR JUSTICE COTTER: Right, that's the first two sections. Where are we in relation to directions?

MS STACEY: My Lord, I have handed up a copy of the order, and what you have on there are some changes -- proposed changes in red which I propose that we go through.

MR JUSTICE COTTER: Yes.

MS STACEY: (Inaudible) to paragraph 5, it's to do with the longstop. We have proposed a longstop, but as you will have seen from the skeleton, we say that a caveat to that, which is subject to the court's ability to accommodate the trial by that date. So we are somewhat in the dark, and for that reason I have deleted the words because we just don't know, or we don't want to get into a situation of us having a longstop but then having to come back to the court to discharge it. I suggest that given the four weeks it takes us to put up the warning notices at all the sites, the petrol station sites, that's why I have inserted the words, "Four weeks after the date of the final hearing to the time for the order to be produced".

So we don't have any difficulty with the longstop, it's not because we want to drag things out, if you like, it's simply because that date seems a bit arbitrary.

MR JUSTICE COTTER: It's not arbitrary, it's the fact that you are concerned you won't be able to get a hearing before it.

MS STACEY: Well, we picked it out -- it fits with the directions exactly, but it's exactly that, my Lord, we were concerned that we don't know whether that date would work with the court.

So that's (Inaudible) why I didn't flag that with you.

MR JUSTICE COTTER: What's your availability like?

MR LAURIE: We can make ourselves available.

MR JUSTICE COTTER: Mm-hmm.

MS STACEY: It seemed to be more logical and coherent to say it shall continue to operate until the next order, and the directions cater for that.

MR JUSTICE COTTER: You say that because -- and again so, Mr Laurie understands -- you say that because the requirement is to be that the court will list the matter on the first available date after July. It's not kicked into the long grass, it's just you're concerned the court might not be able to deal with it.

MS STACEY: Exactly, given that there is a clear direction for listing -- or in my submission be sufficient for there to be a provision for continuation until a period after the date of that hearing for the court then to produce the order and for the service provisions to be provided.

MR JUSTICE COTTER: Mm-hmm, yes. I mean, the only concern I have is I referred to the longstop in the judgment --

MS STACEY: Yes, I noticed that over the lunch time we -- but I did say in the skeleton it's subject to the court being able to accommodate that date.

MR JUSTICE COTTER: Yes, yes. Do you know, I'm ... sorry ...

MS STACEY: Sorry to cut across your thinking. The other course I had would be to insert some words such as, "On 12 November 2024 or four weeks after the final hearing, whichever is the later", but it's just a bit more wordy.

MR JUSTICE COTTER: No, I prefer that.

MS STACEY: Yes, so it keeps 12 November in.

MR JUSTICE COTTER: Yes, because I've referred to it already. And the reality of the matter is that what will happen is when this order is done, I will speak to the listing office personally about the matter. It won't disappear into any long grass in relation to this. The quicker we get a date, the better.

MS STACEY: Yes.

MR JUSTICE COTTER: Now that's -- because it will not be -- I did wonder in the time available whether I should be doing it over the lunch time -- the problem is it's lunch time, so people disappear -- whether I should try and get a date now. I can't envisage that it will not be possible to deal with it. The likelihood, however, is, and I make this clear, that by virtue of the availability of High Court judges and the listing once referred to as the vacation, the likelihood is that it will be October.

MS STACEY: Yes. It's helpful to have that indication. Can I ask for the insertion of the, "Four weeks if it is later"?

MR JUSTICE COTTER: Yes.

MS STACEY: We want to cater for the --

MR JUSTICE COTTER: Sorry. Yes, Mr Laurie?

MR LAURIE: I just need to (Inaudible). We have some dates that are fairly -- that the trial for the criminal side of this is taking place in August and September anyway, so most of the people on this injunction will be involved in those trials --

MR JUSTICE COTTER: In the August and September?

MR LAURIE: In August and September --

MR JUSTICE COTTER: I think the likelihood is it will be in October. In fact, I can say a very highly likelihood it will be in October.

MR LAURIE: The problem is I don't know what dates the other people have got, if you understand what I mean, so there may be other cases going on, so there will need to be an element of checking with other people. You wouldn't want to find out at the very last moment --

MR JUSTICE COTTER: What I would do in relation to that is, and I don't know whether Ms Stacey's put it in or not, is I will --

MS STACEY: The listing paragraph, that's what (Inaudible) 16, which I think doesn't deal with the point you have in mind.

MR JUSTICE COTTER: No, it doesn't. The point I have in mind is wording along these lines, "Liberty to apply in the first instance by email copied to the other parties for variation of the directions" to me. What does that do, it simply gives you -- rather than bouncing around between the many judges here, it gives one judge, it makes it easier, because that one judge understands the case and will then go and speak to listing if there is a difficulty. Otherwise it just bounces around between different judges and you could end up with a judge who's no idea at all about this litigation and doesn't understand the importance of, say, for example, being involved in a criminal trial, whereas I do.

MS STACEY: Yes, I can put that --

MR JUSTICE COTTER: So if you put that in, that means I'm contactable in relation to this by email in the first instance, and I will deal with those matters.

MS STACEY: That's fine, thank you.

MR JUSTICE COTTER: I think that's the best way we can protect that. It's a good point to raise, but I think that's the best way to deal with that.

MS STACEY: If I can then -- so paragraph 5 is the point about the longstop.

Paragraph 9 is the next change, where we've inserted it would record that I will be content (Inaudible) service date be extended.

MR JUSTICE COTTER: Yes.

MS STACEY: So that's that, and we have given them 30 April to (Inaudible) in the circumstances --

MR JUSTICE COTTER: So you reckon as it's a longer period, Mr Laurie, it's an extension of time for people to do things. It's not cutting it down, it's extending it. Yes.

MS STACEY: 10, we've just tweaked it slightly so that the defendants in addition to any claims to be heard (Inaudible) their defence by no later than 15 May, and I would just (Inaudible) those last two words.

MR JUSTICE COTTER: Yes.

MS STACEY: 11, it's the wording (Inaudible) it up, if you like:

> "Any defence not filed [acknowledgment of defence in accordance with 9 and 10, that should say] should not be entitled to defend the claim that is being heard or take any further role."

That's the red line.

MR JUSTICE COTTER: Yes.

MS STACEY: 12:

> "If defences are filed [so there's a qualification] in accordance with 10, then we shall file and serve our replies by 19 June."

The dates haven't changed there.

13 again, "If defences are filed, claimants shall ...", I have taken out, "Updating evidence in response by 3 July".

MR JUSTICE COTTER: Mm-hmm.

MS STACEY: 14:

> "Any defendant who has filed acknowledgment of defence in accordance with those paragraphs shall file any evidence --"

MR JUSTICE COTTER: Good, yes.

MS STACEY: 15, that is the older(?) paragraph, you see I have struck it out just above the heading "Service of this order" further down the page, and I've brought it up so we know what the position is before it's listed. So any other person who wishes to vary/discharge shall apply -- just let me read that and see what (Inaudible).

MR JUSTICE COTTER: Yes, that's what I had in mind.

MS STACEY: Yes, so that's another red line. We have slotted it in before the listing so that at the time it's being listed -- that's the next paragraph, paragraph 16 -- we have put in, you'll see there:

> "Two and a half days provisional time estimate [we've inserted the word "provisional" in front of time estimate] two and a half days (which assumes a fully contested hearing) or such shorter time estimate that the court considered appropriate if those paragraphs have not been complied with."

Now, I didn't have your directions variation proposal in mind there, so I wasn't quite sure how it should work.

MR JUSTICE COTTER: The matter should be put back before me for review of time estimate, shouldn't it?

MS STACEY: Yes, that seems sensible. But what I -- if one of the named defendants complies and the others don't, it's likely we won't need two and a half days, but you might need a little bit longer to --

MR JUSTICE COTTER: Yes, but I can consult people on that. What I have is control over it --

MS STACEY: My Lord, you might say that the claim should be listed for final hearing for a time estimate to be determined by your Lordship.

MR JUSTICE COTTER: Yes.

MS STACEY: Yes.

MR JUSTICE COTTER: So you have this. I will see what the argument is and I will tailor the amount of court time for it on that.

MS STACEY: Right, so we will email you with our position following an application by the claimants as to an appropriate time estimate.

MR JUSTICE COTTER: My advice to you, Ms Stacey, is always try and rope in a judge if you can to do this, because continuity is a big issue.

MS STACEY: No, my Lord, I am with you, thank you, and we will. So I'll make that tweak to paragraph 16, I'll insert, "Liberty to apply" by an email provision at the end of the directions above the headings of this order.

MR JUSTICE COTTER: Yes.

MS STACEY: And the rest I think stands. Then one other change I should deal with (Inaudible) attention to that on the penultimate page, paragraph 20F.

MR JUSTICE COTTER: Yes, I have it.

MS STACEY: We forgot to put in the other method, social media references --

MR JUSTICE COTTER: Yes, fine. Well, these are such complicated orders.

MS STACEY: So what we will do is replicate those across all three orders, my Lord, and email them across to your clerk.

MR JUSTICE COTTER: Okay.

MS STACEY: Unless there is anything else I can help you with.

MR JUSTICE COTTER: Mr Laurie.

MR LAURIE: Sorry, just for the benefit of (Inaudible), because obviously I got it wrong last time, who do I have to -- who do we defendants have to communicate with to indicate that we are complying with these --

MR JUSTICE COTTER: Well, the position is under the draft order when you get it, you will have to have a look at the provisions that are set out "Directions to final hearing". That's all you're interested in, okay?

MR LAURIE: But whom do we communicate to do that?

MR JUSTICE COTTER: Well, there are -- in all civil proceedings when proceedings are issued, you need to keep the court in the loop and primarily deal with the court, all right? So the idea of an acknowledgment of service is that the court and the other side both understand that, and acknowledgment of service means I have the proceedings and I intend to be involved in them. Likewise in relation to evidence, yes, the court and the other side.

Essentially what I have tried here, what I'm trying to do, is give a structured opportunity to do that. The time for the acknowledgment of service has been extended so people still have the opportunity to do that, and that's just a form. In relation to the defence, it's 15 May, okay, in relation to that, and I'm going to say something in a moment which we've not touched so far, but I suspect because of my involvement in other cases, Ms Stacey sees coming down the track in a minute anyway

So that's 15 May in terms of defence. Then there is an ability to file evidence, okay, and then there is the hearing, which will be determined by me as to when it's going to be. That's for the defendants. For anyone who is not a defendant but wants to be heard in that, they have to notify again the court and the other side by 3 July. I have inserted that because I can't be in a position properly whereby

I think, "Right, okay, I know how long this hearing's going to take, it's going to take a day", and then somebody has a whole range of legitimate arguments, which is -- you never had an argument you wanted to raise, and fine -- and I have the time estimate wrong. I need to know what the hearing's about, and it seems to me 3 July perfectly adequate to give people sufficient time, bearing in mind how long this has been going on for, to take a view as to whether they're going to involve themselves or not.

Does that help?

MR LAURIE: Yes. I'm more worried about the actual technicalities of who do I contact.

MS STACEY: If Mr Laurie's content to communicate with the court or the claimant, I think the answer is both.

MR JUSTICE COTTER: Both -- sorry, I should have said -- so my criticism which you got round earlier was in terms of the application to make your submission which you made, you should have told the court. Then what could have happened is the court -- me, my clerk who helps me -- will then email you and say, "Do you have any written submissions, Mr Laurie, anything you want me to read" -- are you with me? There will be an element of communication regardless of what the claimants say to you because at the end of the day, I have to try and reach a conclusion. So it's both, if in doubt, both.

MR LAURIE: So will someone give me an email address after this?

MR JUSTICE COTTER: For the court or --

MR LAURIE: Yes, for the court, yes. I have --

MR JUSTICE COTTER: Yes, we'll -- we can give an indication as to how you communicate with the court.

Right, okay. In these cases, essentially the key is in the number. Whatever you do, when you write to the court at this address, providing you have a number. But there are also methods of uploading documents as well, but ... stay around and we'll deal with that separately.

Now what did I want to raise that's not been raised so far in undertakings is what I wanted to raise. I made a sort of passing reference to this, and it's something I have dealt with before as to what undertakings do and don't do. An undertaking is a promise to the court not to engage in the behaviour covered by the

order. Now (Inaudible) says if there are criminal proceedings, why do you need civil, okay? By similar parity, if someone's promising to do something, why do you need an order, yes? The promise will very often be sufficient in injunctions generally, and the form of that is not something that anyone should find frightening. That can be dealt with, if necessary, by me.

Why do I say that? Because in other cases -- not this, but in other cases -- people have been concerned about wordings provided by claimants -- not this claimants, but other claimants -- that they're trying to be clever and they're trying to ensnare -- wider restrictions. I can deal with those concerns and have dealt with them in other cases, if people want to. They don't want to be defendants, they don't want to take part, they don't want any risks of any costs or anything at all. They just want to say, "Right, okay, I've had enough of this. I'm going to engage in lawful activity, and I want out". Undertakings are the way to disappear off this list of defendants in the briefest way.

That's done through contacting the claimant, and if issues arose in relation to that, at least until I'm looking at it -- May, okay. I don't know whether we should reflect that in the order, possibly not, it's very difficult, but I think it's part of my ongoing case management.

MS STACEY: My Lord, yes, I have no objections to that. You should know, and you raised it yourself, given I was in the *National Highways* case where the (Inaudible) undertaking was attached to the judgment, and we had that back and forth about the form and we adopted exactly the same form of undertaking, written to them and then chased(?) to the end. So it's the same form that your Lordship has (Inaudible).

MR JUSTICE COTTER: Yes, fine, thank you. I had forgotten that.

But what I'm saying is I will deal with that if anyone wants to give an undertaking and ask they shouldn't be frightened about it. It's easy to be, and I understand how overawed some people -- as you said, you yourself, although you've articulated the point very succinctly and very well, you're an engineer, not a lawyer. I recognise that I'm a lawyer, not an engineer, and I would be equally frightened by some of the things that you can do.

I reflect that, I've got that, and I've tried to reflect that in the way I deal with people, including defendants in these actions. So if there are issues about that,

I would prefer they were raised by people by email or otherwise, if they relate to undertakings. I mean, we can forget undertakings and just call them promises, that's effectively what they are. They're still subject to the sanctions, the penalty of the court if the court takes the promise. But in terms of anyone who you might (Inaudible) say, "I want out of this, I don't want to be a defendant in it, how do I stop", the reality is that's the answer. That's, as it were, the exit route from this.

Otherwise what will happen will be if somebody doesn't engage at all, it will still proceed with them as a named defendant. They don't just drop off simply because -- the claimants are highly unlikely to take the view that just because somebody has not responded, that means they're not going to be somebody who should be the subject to the order, they'll (Inaudible).

That was what I wanted to mention. There's nothing else. Is there anything else I need to cover?

MS STACEY: I don't think so, my Lord.

MR JUSTICE COTTER: Mr Laurie, no?

MR LAURIE: No.

MR JUSTICE COTTER: Okay. Communication is key --

MS STACEY: One question, sorry. In the order where we said applications to you, I won't put the email address in that, I will simply say, "Mr Justice Cotter by email". I think I can say that.

MR JUSTICE COTTER: It can just be through the court office, through the listing office, they just forward it on. They just stick it on the CE-file and notify junior to my clerk here, then she just says, "You have some work to do". That's the way it works.

MS STACEY: (Several inaudible words).

MR JUSTICE COTTER: Yes. So that's the way -- in other words, yes. No one tends to send -- you don't get my email because I don't get things -- I can't be trusted to be accessing my email, in fact after a recent episode, probably very wisely. So it goes to a number of other people who then tell me that's what I have to do.

MR LAURIE: So I'll get an email address?

MR JUSTICE COTTER: You stay there and we'll get some information to you about communication with the court.

MR LAURIE: Okay.

MS STACEY: I'll get the draft across before the end of the week.

MR JUSTICE COTTER: Thank you. Okay, all right.

(3.26 pm)

(The hearing concluded)

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