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

NCN: [2024] EWHC 1546(KB)
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

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

1. MR JUSTICE COTTER: This is an **ex tempore** judgment following a review of interim injunctions. The three claimants sought and obtained interim injunctions to restrain unlawful protest and activity by the defendants at premises at Shell Haven, Shell Centre Tower and the Shell petrol stations. This judgment follows a hearing to consider the claimants' applications; (i) for the continuation of the orders of Mrs Justice Hill, made on 23 May 2023, in respect of the three claims until the trial of the action; (ii) for orders that deem steps taken in relation to service to have been sufficient; also for alternative service and variations to existing alternative service provisions pursuant to separate applications and (iii) for directions through to trial in respect of all proceedings. This judgment will cover the first two issues, it is only relevance in relation to the third application is that the matter is to be listed for trial in July of this year, so in only a few months' time.

2. This review hearing was required by paragraphs 6 of the orders of Hill J and paragraph 17 of the order of Soole J, made on 15 March 2024. The first and second claimants are respectively the freehold owners of firstly the Shell Haven oil refinery, a substantial fuel storage and distribution installation; and secondly the Shell Centre Tower, a large office building. The third claimant is Shell UK Oil Products Ltd, it markets and sells fuels to retail customers in England through a network of petrol stations.

3. References to Shell in this judgment are references to the three claimants, unless otherwise stated. The three claims have been managed together, although not formally consolidated. There have been a number of interim injunctions granted in these proceedings. Injunctions were granted against persons unknown restraining unlawful protests at the Haven and Tower premises on 5 May 2020 by Bennathan J; an interim injunction was granted on 5 May 2022 by McGowan J and a further interim injunction granted on 20 May 2022 in the petrol stations claim against persons unknown, restraining unlawful protests by Johnson J (the judgment is at [2022] EWHC 1215).

4. Turning to the evidence before Hill J, the claimants' solicitors provided detailed chronologies setting out the incidents which they have been able to identify since of direct action protest against the claimants since Spring 2022. The incidents were fully described in the following witness statements: firstly a statements from Fay Lashbrook,

the Haven terminal manager; secondly a statement from Mr Garwood in respect of The Tower; thirdly a statement from Mr Austin, the claimants' health, safety and security manager in respect of the petrol stations; and finally a statement from Mr Pritchard-Gamble, the security manager. These statements were all dated 30 March 2023 and supported by voluminous exhibits.

5. Since the hearing before Hill J, a second statement has been prepared by Mr Pritchard-Gamble, dated 14 March 2024, and Mr Austin has provided a fourth witness statement dated 14 March. Ms Alison Oldfield, the solicitor with (Inaudible) to the cases, has also provided further statements.

6. No acknowledgments of service (or any evidence) has been served by or on behalf of the defendants despite provision having been made by paragraphs 14 and 15 of the order of Soole J. Paragraphs 20 and 21 of that order required any defendant who wished to participate in the review proceedings to file an acknowledgment of service and any evidence to be relied upon, in default of which permission of the court was required before a defendant could make any submissions. There was also a requirement to give the claimants 48 hours' notice.

7. Mr Laurie, who is attending today, did give 48 hours' notice to the claimants but has not filed an acknowledgment of service or any evidence. He sought permission to make submissions. He said candidly that he had not fully understood the requirements of the order and thought that giving the claimants 48 hours' notice was all that was required. He said he wanted to make an overarching legal point and did not require supporting evidence to make it. Given the widespread interest in these orders and the limited and focused nature of Mr Laurie's intended submission, I gave him permission to address the court.

8. Turning to the background/outline facts, these are adequately set out in the judgment of Johnson J at paragraphs 10 to 19, and within the judgment of Hill J at paragraphs 10 to 21. They need no detailed repetition or expansion by me, save to note that XR, a campaign group, which was formed in October 2018, seeks to affect the government's policy on climate change through civil disobedience. It called upon its members to support its aims. Several other groups are associated with this stance,

including Just Stop Oil, Youth Climate Swarm, and Scientists' Rebellion. These groups have been associated with and grown out of the climate protest movement. Matters came to a head in April and May 2022 when various activities were undertaken with what Mr Pritchard-Gamble described as "the apparent aim of causing maximum disruption to Shell's lawful activities, and thereby generating publicity by the protest movement."

9. Turning briefly to the separate claims, Bennathan J was provided with witness statements in relation to the Haven protest, which set out the activities including a six-hour incident on 3 April 2022, which saw a group of protesters blocking the main access road; protesters stopping and attempting to access the jetty; and similar incidents at fuel-related sites geographically proximate to the Haven.

10. Within a witness statement, Mr Brown explained that his main concerns related to the fact that the Haven site is used for the storage and distribution of highly flammable hazardous products and if unauthorised access was gained this could lead to a leak, fire or explosion with, consequentially, very significant danger. He had concerns for the personal safety of staff and contractors, and indeed for the protesters themselves.

11. As for the Tower action, Bennathan J was provided with witness statements from Mr Garwood in respect of the claim, again outlining the various incidents, including on 6 April 2022 (when a paint-like substance was thrown leaving marks on the walls, around the staff entrances), on 13 April 2022, when about 500 protesters converged on the Tower, with some gluing themselves to the reception area, on 15 April when about 30 protesters holding banners obstructed the road where the Tower is located, and on 20 April when 11 protesters holding banners, used a megaphone and ignited smoke flares. He also referred to protesters having graffitied and stuck stickers on the outside of the building. He expressed concern about intimidation of staff and visitors, and the blocking of entrances and exits to the Tower. The latter was a health and safety risk, in particular because it restricted access for emergency vehicles and sometimes meant members of the public had to walk on the road.

12. As for the petrol stations action, Johnson J was provided with witness statements from Benjamin Austin, and within his judgment explained at paragraph 2 the details of the

various activities, including the blocking of forecourts, damaging display screens with hammers, kiosks sabotaged and protesters variously glued themselves to the floor, the fuel pump, the roof of a fuel tanker, and each other. A total of 55 fuel pumps were damaged. The hazards arising from the protests being within a petrol station, and petrol being a highly flammable substance, are to a large degree obvious. He summarised such matters at paragraphs 18 and 19 of his judgment.

13. It is important to note that it is the claimants' submission in respect of these applications, as it has been on previous occasions, that the orders do not stop protesters from undertaking peaceful protests, whether near the site or otherwise. Rather the claimants' concern has been to enforce its proprietary rights and mitigate the health and safety risks posed by unlawful activities.

14. The orders of Hill J were carefully drawn up and were aimed at solely prohibiting activity which is clearly unlawful. They were to continue through to the trial of the matter, but with provision for this review.

15. The order now sought by the claimants is for the continuation of the injunctions on materially identical terms to those already in force for the short period of months up until the final trial of this matter. In comprehensive and helpful submissions, Ms Stacey KC has indicated that the issues and legal principles applicable to the claims are essentially identical, and the evidential foundation for the continuation is materially very similar, to what are before Hill J.

16. I turn to the scope of the review hearing and make the following two observations in relation to review hearings and injunctions made in cases where persons restrained are unlikely to have any right or liberty to do that which is prohibited by the order, save potentially when convention rights are weighed up in a proportionality balance.

17. Firstly, and as the Supreme Court has recently observed in the case of *Wolverhampton City Council v London Gypsies and Travellers [2023] UKSC 47*, although there are exceptions, interim injunctions, where they have been made in proceedings where there is unlikely to be significant factual disputes at any trial impacting on the claimants' entitlement to effective protection of disputed rights, need to be viewed in their own

particular circumstances. The defendants have usually had an opportunity to argue the merits of the order and to adduce evidence, including under the liberty to apply provisions. So when the evidence and arguments were carefully considered before an interim order was made and there has been no appeal, the court, is entitled to ask at a review hearing such as this as an initial broadbrush question: “what has changed or is likely to change before the trial?” If the answer is nothing, then this gives a very firm steer towards continuation of the order to trial. This means that a detailed reappraisal of all of the arguments previously considered, with consequential implications in terms of costs and court resources, may not be required. This is all the more so if the trial is likely to take place within a matter of months, as was the case in *Transport for London v Lee and others*, [2023] EWHC 402, (see paragraph 26) and as is the case here, with a proposed trial being listed for the first available date after 24 July 2024, so in just over three months' time, with a backstop date of 12 November 2024.

18. The court must be willing to consider any significant developments since the making of the interim order and any, applications/arguments raised by any defendant or other person entitled to address the court. However, in the absence of any of these, only a short hearing may be necessary. I am sure this is what Hill J envisaged when she referred to the "slightly narrower approach appropriate on an uncontested hearing".

19. Secondly, the courts grant injunctions on the assumption that they will generally be obeyed. Therefore, the court is entitled to expect no breaches to have occurred since the interim order was made, and ordinarily, and without more, the absence of any breaches should be seen as reflecting the effectiveness of the order and not evidence or the lack of evidence undermining the need for it.

20. There has been widespread publicity of the orders made on contempt applications in protester cases of various forms and people are very well aware of what may follow if an order is disobeyed.

21. At this point, it is necessary to turn to the submission made by Mr Laurie, as it is effectively a submission that there has been a change of circumstance.

22. Mr Laurie's submission is that the coming into force of the Public Order Act 2023 represents a material change, since the orders were made by Hill J, as sections 1, 2 and 7 create new offences. Sections 1 and 2 create the offences of locking-on and being equipped for locking-on; and section 7, interference with use or operation of key national infrastructure.

23. In relation to the offence of locking-on, a person commits the offence if they attach themselves to another person or to an object or land that causes or is capable of causing serious disruption to two or more individuals or an organisation in a place other than a dwelling when the person involved intended the consequences of serious disruption. A person who commits an offence under 1 is liable on summary conviction to a term of imprisonment not exceeding the maximum term for summary offences.

24. Section 7 provides that a person commits an offence if they do an act which interferes with the use or operation of any key national infrastructure, and they intend that act to interfere with the use or operation of such infrastructure, or are reckless as to whether it will do so. Under sub-section 4, a person's act interferes with such use if it prevents the infrastructure from being used or operated to any extent for its intended purposes. A person convicted of an offence under this section is liable on summary conviction to a term not exceeding the sentencing limit of the magistrates court, and on conviction to a term of imprisonment not exceeding 12 months.

25. Mr Laurie's admirably brief submission was that in light of these new offences, the orders were no longer necessary. Put simply, 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.

26. No authorities have been cited to me in support of (or against) this proposition.

27. As I indicated during submissions, it has not been a settled principle adopted by the civil and family courts to date that the courts should refuse to prevent future conduct by an order solely on the basis that if material activity does occur, the defendant may afterwards face criminal prosecution, or indeed to refuse to restrain conduct of a type

which has already been the subject of criminal proceedings. The essential reason for this is that civil orders address prospective behaviour so that damage or harm is avoided. Criminal proceedings, if brought, this being a matter out of the control of the party potentially subject to harm or damage, ordinarily deal with matters once the damage or harm has occurred, save for inchoate offences.

28. My own research during submissions established that the issue of whether to use civil injunctions when criminal or alternative statutory form civil orders are available has been considered by the courts in the past and is not straightforward. In *Stoke-on-Trent City Council v B&Q Retail Ltd* [1984] AC 754, the House of Lords was concerned with the problems faced by local authorities when DIY supermarkets and others sought to open on Sundays in breach of the law as it then was under the Shops Act 1950. The maximum penalty for doing so was of limited financial impact. The House of Lords held that an interlocutory injunction, as it was then described, to restrain Sunday trading had been properly granted. Having said that the Courts should be 'reluctant' to grant an injunction in aid of the criminal law. Lord Templeman stated at paragraph 776:

> "It was said the council should not have taken civil proceedings until criminal proceedings had not persuaded the appellants to obey the law. As a general rule, the local authority should try the effect of criminal proceedings before seeking the assistance of the civil courts. But the council were entitled to take the view that the appellants would not be deterred by the maximum fine which was substantially less than the profits which could be made from illegal Sunday trading."

29. In that case the Claimant was acting pursuant to section 222 of the Local Government Act which does not apply to the claimants. The question whether conduct would be likely to be prevented by the risk of criminal proceedings as submitted by Mr Laurie has not been specifically covered in evidence by the claimants, but this is hardly surprising given that they have only been alerted to this point within the last 48 hours.

30. In the *Mayor of London v Hall* [2011] 1 WLR 508, the Court of Appeal upheld the grant of an injunction restraining protesters from occupying Parliament Square in aid

of the enforcement of bylaws which provided for modest financial penalty. Lord Neuberger MR considered the issue of whether an injunction should have been granted in aid of the criminal law at paragraphs 52-57. Firstly, he stated that the Claimant had a right as the person in possession of property to seek an injunction. Secondly the Judge had properly concluded that demonstrators would not be deterred by the ?? of criminal proceedings.

31. *In Swindon Borough Council v Redpath* [2019] EWCA Civ 943, the court was concerned with the local authority's choice to seek a civil injunction as opposed to what was then essentially a broadly criminal equivalent, an antisocial behaviour order ("ASBO"). As Rix LJ stated:

> "On certain facts, it may be that a local authority has a choice between an antisocial behaviour injunction and an antisocial behaviour order, and if that is a genuine choice, I do not see why it cannot choose which it prefers at any rate so far as the jurisdiction is concerned. As for matters of discretion, however, the difference between the regimes may well enter into the argument. However, there has been no attempt here to show that this is a case more properly relevant to the Asbo regime."

32. In *Birmingham City Council v James* [2014] 1 WLR 23, Jackson LJ observed that in many situations in which on the facts two different preemptive orders are available, and there is no closest fit principle which cuts down the courts' powers to make preemptive orders. However as in *Redpath* the Court was concerned with statutory alternative to control future behaviour.

33. In *Sharif v Birmingham City Council* [2020] EWCA Civ 1488, in a court presided over by the Master of the Rolls was concerned with street or car cruising. It was argued that where Parliament had provided a remedy and a specific procedure in the form of a public space prevention order under part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 to combat the very type of behaviour complained about, the court should give effect to Parliament's intention, and only in very rare circumstances would it be appropriate to grant injunctive relief.

34. Bean LJ did not accept that argument, stating that in his view car cruising in Birmingham would continue unless and until effectively restrained by the law, and that

nothing short of an injunction would be effective to restrain them; indeed he regarded it as a classic case for the grounds of an injunction.

35. This brief overview of authority has shown that there has been some reluctance on the part of the courts to order civil injunctions when parallel statutory or criminal processes are available. However it appears to me that 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 us an injunction is the stronger.

36. Also the Claimant is able to rely on its right to possession/to control access to its property (the first ground referred to by Neuberger LJ in *Hall*.)

37. The following additional matters are also relevant: firstly, some of the unlawful activity which led to the making of the interim orders already exposed the participants to criminal proceedings, such as for criminal damage, but this was clearly not a sufficient deterrent as the evidence proved. Secondly, 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 injunctions. And thirdly, the maximum sentence for the offences under sections 1 or 7 is 12 months, whereas the maximum penalty for contempt for breach of an order is of course much greater at two years, so a much greater deterrent.

38. For the purposes of this review hearing, I proceed on the basis that the existence of criminal offences that may prevent criminal activity may be a matter relevant in the exercise of the court's discretion at the final hearing. However, I put it no higher than that. It is certainly not a knockout punch as regards the continuation of the order to trial when a full argument may be advanced before the Court.

39. A major problem with Mr Laurie's submission, made without any evidence at a review hearing, is it requires the court to undertake a huge leap of faith, and to assume that the compliance with the order since the Act came into force has at the least very largely been because of the new offences. Given the protracted history of matters, and the nature and extent of activities to delete some of which were clearly “criminal”, I am not

at this hearing prepared to make that leap. So for the purposes of this review hearing, I consider the argument Mr Laurie raises as one which can be weighed in to the discretionary balance in due course at trial but not sufficient to warrant not continuing the orders.

40. The following matters are also of significance when considering the risk of further unlawful activities: firstly, 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. It appears that taken as an overview in this regard, nothing has changed or is unlikely to change before trial. This is essentially the same conclusion as that reached by Cavanagh J following a review hearing in *Transport for London v Lee* [2023] EWHC 402. He stated:

> "The real issue before me therefore is whether the evidence of recent events that have taken place since 30 October 2022 provides grounds for declining to extend the injunction on material in identical terms. The answer is there are no such grounds. The activities of Just Stop Oil have continued, albeit with a change of tactics, and in my judgment the justification for the interim injunctive relief to restrain unlawful activities on the roads is as great as it has ever been."

41. Secondly, (and as a consequence) there is force in the submission that there has been no material reduction in risk as evidenced by the content of the second statement of Mr Pritchard-Gamble, dated 14 March 2014, and specifically to the following: the protests outside the claimants' premises as described at paragraphs 4.4.2 and 4.5.2 of the statement. 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.

42. Also, the annual general meeting on 23 May 2023 was heavily disrupted and there was a protest at one Shell petrol station in Oxford, (paragraph 4.5.4 of the statement). It seem clear that the wider activities of the groups in question remain targeted at the oil and gas industry. This includes protester activity referred to at paragraphs 4.2.3 and 4.2.5 of the witness statement, including widely reported incidents at sports events, art galleries and museums and also slow marches. Further protests at or close to premises used by organisations involved in the trade or use of fossil fuels or providing support to such organisations, including insurance companies, are set out in detail at paragraph 4.10 of the statement; also protests directed at the government or other political parties.

43. The next point is that there have been comments reiterating that this is "an indefinite campaign of civil resistance" as set out in paragraph 7.3.2 of the statement, until those involved achieve their aims. As recently as 3 March 2024, it was stated:

> "Non-violent civil resistance to a harmful state will continue with coordinated radical actions that reach out to new people and capture the attention of the world. Just Stop Oil will continue to (Inaudible) with a major focus until we win."

44. In my judgment for the purposes of this hearing, it should be assumed, at least as a starting point, that the orders in force have played their part in controlling the claimants' behaviour. Indeed, there have been complaints made about the role of the courts and the orders made as restricting the ability to take action, set out at paragraph 4.3 of the statement.

45. I also take into account the refusal of the named defendants to gave undertakings. I note the observations of Linden J in the Esso Petroleum case: 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.

46. I am satisfied, having regard to matters which I have set out, that there is a real and continuing risk of imminent and unlawful activities if the orders were to be discharged. In my view, unlawful activity would be likely to resume to some degree.

47. I shall now deal with the legal controls on the grounds of injunctions. I do so by reference to the judgment of Hill J. Whilst I will list the considerations I have taken into account, I will not set out my reasoning in full detail in relation to each consideration, as it is exactly the same as the reason set out by Hill J.

48. The law imposes different tests which must all be satisfied before an injunctive order can be made on an interim basis, or continued.

49. The claimants must demonstrate (i) that there is a serious question to be tried; (ii) that damages would not be an adequate remedy for the claimant, but a cross-undertaking in damages would adequately protect the defendants, or that the balance of convenience otherwise lies in favour of the grant of the order; (iii) that there is a sufficient, real and imminent risk of damage so as to justify the grant of an injunction; (iv) that the prohibited acts correspond to the threatened tort and only include unlawful conduct; (v) there is no other proportionate means of protecting the claimants' rights; (vi) that the terms of the injunction are sufficiently clear and precise; (vii) that the injunction has clear geographical and temporal limits; (viii) that if the defendants have not been identified, they are in principle capable of being identified and served with the order; (ix) that the defendants are identified in the claim form by reference to their conduct; (x) that the interferences with the defendants' rights to free assembly and expression are necessary for and proportionate to the need to protect the claimants' human rights; finally (xi) that the order does not restrain publication, or if it does, the claimants are likely to establish at trial that publication should not be allowed.

50. In my judgment, the position remains the same as at the time the orders were made by Hill J. There is clearly a serious issue to be tried in these claims, applying the test set out in *American Cyanamid v Ethicon* [1975] AC 396. The position is not materially altered by the decision of the Supreme Court in the *Wolverhampton* case.

51. The next question is whether damages is an adequate remedy, ie would damages be an inadequate remedy for the claimants and would a cross-undertaking in damages adequately protect the claimants? I adopt the reasoning and conclusions of Hill J set out at paragraphs 137 to 140 of her judgment. Given the 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 and, more importantly, the health and safety risks, if triggered, could cause serious or fatal injuries for which damages would not be an adequate remedy. Conversely, Shell has offered a cross-undertaking in damages if it becomes necessary and has the means to satisfy such an order, which would be an adequate remedy for the defendants. So while damages are not an adequate remedy for the claimants, the cross-undertaking in damages is an adequate remedy for the defendants.

52. As damages are not an adequate remedy and the cross-undertaking is adequate, it is not necessary to separately consider the balance of convenience. In any event, it is in favour of continuing the relief.

53. As for the question whether there is sufficient, real and immanent risk of damage so as to justify the grounds of what is a precautionary injunction, it is only appropriate to grant an injunction if there is a sufficient and real immanent risk of a tort being committed. The evidence before this court, satisfies that requirement, and I have already set out why I consider that a risk of unlawful activity remains.

54. Turning to the scope of the order, the court has been asked to continue the orders made by Hill J on materially identical terms. I adopt the reasoning and conclusions reached by Hill J at paragraphs 150 to 151. The acts prohibited in the injunction for the Haven and the Tower necessarily correspond with the threatened tort to trespass to land and private nuisance. The acts prohibited in the petrol stations reflect those necessary to deal with what might be conduct constituting the tort of conspiracy to injure.

55. As for the terms being sufficiently clear and precise, I am satisfied that this is so, as Hill J was, as set out at paragraphs 154 to 156 of her judgment.

56. As for geographical and temporal limits, the extent of the Haven and Tower injunctions are made clear by the plans appended to them. In respect of the petrol stations injunctions, this matter was revised by Hill J, and again I am satisfied that the form of order is appropriate. Turning to the temporal limits, this is a matter which has changed, much as it changed before Cavanagh J in *Transport for London v Lee*. The claimants seek only a short extension of a matter of three months minimum, up to six months also maximum.

57. The claimants have taken active steps to identify persons falling within the "Persons Unknown" description, and there are now 15 named defendants who have been joined to the petrol station claims, not to the other two claims. Those persons were added by the order of Soole J on the basis of the evidence put before the court in the witness statements of Ms Oldfield. This was considered at the last hearing and I need say no more about it. In line with the duty to the court, the claimants have confirmed they will undertake to join any person identified as falling within the "Persons Unknown" description to the three orders as soon as reasonably practicable.

58. As for defendants being identifiable by reference to their conduct, I adopt the reasoning and conclusion of Hill J at paragraph 170; that the description of the persons unknown are sufficiently precise to identify the relevant defendants in circumstances where the descriptions target the conduct.

59. As for interference with the defendants' rights to free assembly and expression necessary for the proportionate need to protect the claimants' rights under Articles 10(2) and 11(2), read with section 6(1) of the Human Rights Act, it is right to note that all three of the injunctions interfere with the defendants' rights under Articles 10(1) and 11(1). However, such interference can be justified when it is necessary and proportionate to protect the claimants' rights. I adopt Hill J's reasoning and conclusions at paragraphs 179 to 180 in this regard.

60. As for the question of whether all practical steps have been taken to notify the defendants under section 12(2) of the Human Rights Act, the eighth statement of Ms Oldfield sets out the extensive steps the claimants have taken to effect service of the order of Soole J and the various documents in the proceedings on the relevant

persons. The ninth witness statement sets out steps taken to notify the defendants of this hearing; consequently the claimants have complied with the service requirements and with section 12(2) in respect of all the defendants.

61. Finally in relation to the issue of publication and the question of whether the claimants are likely to establish at trial that publication should not be allowed, arguments on this issue were ventilated in the hearing before Hill J, and also Johnson J. For the present purposes, the claimants do not challenge Hill J's finding at paragraph 196 that the injunctions do involve some elements of publication for these purposes, and that section 12(3) applies. On that basis, the test is whether the claimants are likely to succeed at the final trial, at least in relation to the writing aspect of the injunctions. I adopt Hill J's conclusion in that regard that the test is met.

62. I turn to my conclusion on the continuation of the injunctions. At this stage, and on the evidence and arguments before me, the analysis of Hill J, set out in her comprehensive and lucid judgment, remains good. Mr Laurie's submission as to the effect of criminal proceedings is a matter which may be weighed in to the discretionary balance, but in my judgment it does not alter it sufficiently at this stage to prevent the orders continuing. So for the reasons set out above, it is appropriate to extend the injunctions in the manner sought by the claimants.

63. I turn now to the applications in relation to alternative service provisions and proposed other variations. All the documents in these proceedings, including the application notices, evidence and the order of Soole J have been served on the relevant parties, including non-parties, as provided for in the alternative service provisions of the orders of Hill J and Soole J. Matters have been comprehensively addressed in the eighth statement of Ms Oldfield. The same process has been adopted to serve the relevant parties with notification of this hearing and the skeleton arguments. The alternative method of service, which have already been indulged by this court in relation to persons unknown, remain applicable, and the court is invited to continue such methods, subject to the variations requested within the applications.

64. Those variations are: firstly, by virtue of the fact that Shell has identified that certain addresses are no longer addresses at which some of the named defendants and

a non-party now reside; and secondly because practical difficulties have come to light in relation to the requirement to serve copies of documents by email, given the file size of the relevant attachments. Applications have therefore been made to vary the alternative service provisions so far as they relate to relevant claims as set out within the application notices.

65. The proposed variations in relation to alternative service on named defendants are set out at paragraph 3.5 of the eighth statement of Ms Oldfield. They are variations to the first limb at paragraph 7 of the order of Soole J, which requires documents to be sent to each of the email addresses listed at schedule 2 of the order by sending emails to such email addresses and providing a link to the documents on the data site, rather than sending or attaching copies of the documents themselves to the emails. Secondly, for four of the named defendants, to permit service by the same method which is already set out in the order of Soole J in respect of the 15th defendant, ie by serving them in the manner as persons unknown permitted by paragraph 7.1 and paragraph 7.2 of the order. This variation is sought in circumstances where Shell has now discovered that the last known address supplied by the police for those additional named defendants is not the address at which those named defendants now reside.

66. Further, for two of the named defendants, to the extent that it is reasonably possible, service of documents may also be effected by sending messages to the social media accounts which Shell has obtained by sending them a link to the data site instead of service on the postal addresses previously used, ie by serving them in the same manner as Harrison and Burns, as permitted by paragraphs 7.4 and 7.5 of the order of Soole J; and finally to permit the sending of an email and link to the documents on the data site to named defendants who provided an email address for service, rather than sending or attaching copies of documents themselves to the emails sent.

67. Shell also seeks an order that the steps already taken to effect service as set out in the eighth statement of Ms Oldfield on the named defendants should be good service.

68. I am entirely satisfied that the variations in relation to the named defendants are appropriate in the circumstances, and I make the appropriate order.

69. As for variations to the alternative service for persons unknown, the variations are as follows: firstly to the second limb of paragraph 22 of the order of Soole J, which requires a document to be sent to each of the email addresses by sending an email to such address providing a link rather than attaching the copies themselves, so the same issue of the size of the attachments; secondly, variations to the third limb of paragraph 22 which requires documents to be sent to any person who has previously requested a copy so as to permit the sending of a letter and a link to the documents on the data site to the last known address, or sending an email to the email address and link to the documents on the data site, or sending an email letter to their retained solicitors and a link to the documents on the data site. Again, that is now in circumstances where Shell has discovered that the address held for the one non-party, Jessica Branch, is not the address at which she now resides, and that documents sent to that address may not have come to her attention. Again, I am entirely satisfied that the variations sought are appropriate.

70. So in brief, I extend the injunctions through to trial; and in relation to the variations sought in relation to alternative service, I grant those variations.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the judge