

IN THE HIGH COURT OF JUSTICE

Claim No: PT-2022-000326

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (ChD)

BETWEEN

- (1) ESSAR OIL (UK) LTD
- (2) STANLOW TERMINALS LTD
- (3) INFRANORTH LIMITED

Claimants

And

(1) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION’ CAMPAIGN OR THE ‘JUST STOP OIL’ CAMPAIGN ENTER OR REMAIN, WITHOUT THE FIRST CLAIMANT’S CONSENT, ON THE FIRST CLAIMANT’S LAND AT STANLOW MANUFACTURING COMPLEX, ELLESMERE PORT, CH65 4HB SHOWN EDGED RED (SAVE FOR THE AREAS HATCHED BLUE AND ORANGE) ON THE ATTACHED ‘STANLOW PLAN’

(2) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION’ CAMPAIGN OR THE ‘JUST STOP OIL’ CAMPAIGN OBSTRUCT OR OTHERWISE INTERFERE WITH THE FIRST CLAIMANT’S ACCESS OVER AND ALONG THE ROAD SECTION SHOWN SHADED YELLOW ON THE ATTACHED ‘STANLOW PLAN’

(3) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION CAMPAIGN’ OR THE ‘JUST STOP OIL CAMPAIGN’ OBSTRUCT THE VEHICULAR ENTRANCES AND EXITS TO STANLOW MANUFACTURING COMPLEX, ELLESMERE PORT, CH65 4HB, WHICH ARE SHOWN MARKED WITH AN “A”, “B” and “C” ON THE ATTACHED ‘STANLOW PLAN’

(4) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION’ CAMPAIGN OR THE ‘JUST STOP OIL’ CAMPAIGN ENTER OR REMAIN, WITHOUT THE SECOND CLAIMANT’S CONSENT, ON THE SECOND CLAIMANT’S LAND AT (A) STANLOW MANUFACTURING COMPLEX, ELLESMERE PORT, CH65 4HB SHOWN HATCHED BLUE ON THE ATTACHED ‘STANLOW PLAN’ (B) TRANMERE OIL TERMINAL, ST PAUL’S ROAD, BIRKENHEAD SHOWN EDGED BLUE ON THE ATTACHED ‘TRANMERE PLAN’

(5) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION CAMPAIGN’ OR THE ‘JUST STOP OIL CAMPAIGN’ OBSTRUCT THE VEHICULAR ENTRANCE AND EXIT TO TRANMERE OIL TERMINAL, ST PAUL’S ROAD, BIRKENHEAD WHICH IS SHOWN MARKED “A” ON THE ‘TRANMERE PLAN’

(6) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION’ CAMPAIGN OR THE ‘JUST STOP OIL’ CAMPAIGN ENTER OR REMAIN, WITHOUT THE THIRD CLAIMANT’S CONSENT, ON THE THIRD CLAIMANT’S LAND AT NORTHAMPTON OIL TERMINAL, 25 ST JAMES MILL

ROAD, NORTHAMPTON NN5 5JN SHOWN EDGED RED (SAVE FOR THE AREAS EDGED BLUE) ON THE ATTACHED ‘NORTHAMPTON PLAN’

(7) PERSONS UNKNOWN WHO IN CONNECTION WITH THE ‘EXTINCTION REBELLION CAMPAIGN’ OR THE ‘JUST STOP OIL CAMPAIGN’ OBSTRUCT THE VEHICULAR ENTRANCES OR EXITS TO NORTHAMPTON OIL TERMINAL, 25 ST JAMES MILL ROAD, NORTHAMPTON NN5 5JN SHOWN MARKED WITH AN “A” ON THE ATTACHED ‘NORTHAMPTON PLAN’

Defendants

SKELETON ARGUMENT FOR THE CLAIMANTS
FOR HEARING ON 11 MAY 2023

References to pages in the bundle take the form e.g. **B200**.

Suggested pre-reading

1. Time permitting, the following is suggested pre-reading, though this Skeleton provides all necessary bundle references.
2. Papers relating to the application before Bacon J on 21/4/2022:
 - 2.1. First statement of Jonathan Peter Barden dated 19/4/2022 at **B32**, in support of the precautionary (*quia timet*) injunction application.
 - 2.2. Note of hearing and judgment of Bacon J on 21/4/2022 at **B1012**.
 - 2.3. Order of Bacon J made on 21/4/2022 at **B1219**.
3. Papers relating to the return day before Adam Johnson J on 11/5/2022:
 - 3.1. First statement of David Holland dated 5/5/2022 at **B862** – updating evidence of further protests, and proving service of (1) Bacon J’s Order, (2) Claim Form, (3) Response Pack, (4) Application Notice, (5) statement of Mr Barden #1, (6) Skeleton Argument, (7) note of hearing and judgment, (8) return hearing application notice and draft Order.

- 3.2. Second statement of David Holland dated 9/5/2022 at **B977** – proving service of the (1) application notice with notice of return date, (2) Particulars of Claim and (3) David Holland #1.
- 3.3. Third statement of David Holland dated 10/5/2022 at **B990** – updating evidence of direct action including social media reports.
- 3.4. Note of hearing and judgment of Adam Johnson J on 11/5/2022 at **B1025**.
- 3.5. Order of Adam Johnson J made on 11/5/2022 at **B1242**.
4. Today’s applications:
 - 4.1. 5/5/2023 sealed application notice for relief from sanctions at **B1198** – for omitting to ask that Bacon J’s Order include the Particulars of Claim in the provision for service by an alternative method.
 - 4.2. Fourth statement of David Holland dated 3/5/2023 at **B1205** – relief from sanctions.
 - 4.3. 5/5/2023 sealed application notice for injunction (and directing short notice for service, if required) at **B1038**.
 - 4.4. Second statement of Jonathan Peter Barden dated 4/5/2023 at **B1069** – updating evidence in support.
 - 4.5. Fifth statement of David Holland dated 4/5/2023 at **B1173** – proving service after the 11/5/2022 hearing.
 - 4.6. Draft Order at **B1045**.

Introduction

5. Cs’ application is for continued precautionary (*quia timet*) injunctive relief, to prohibit direct action protest activities, amounting to unlawful trespass and/or nuisance, by supporters of the campaigns of “Just Stop Oil” (“**JSO**”) and “Extinction Rebellion” (“**XR**”), in relation to 3 “**Sites**” at (1) **Stanlow**, Ellesmere Port, (2) **Tranmere**, Birkenhead, and (3) **Northampton**. The application does not seek to prohibit any lawful activities.

12 April and 11 May 2022 hearings and service of documents and Orders

6. On 21/4/2022 Bacon J granted an interim injunction. Service of her 21/4/2022 Order and other documents was effected as required by paragraph 14 of her Order: see David Holland #1 pa 9 at **B865**.
7. On the return day 11/5/2022 Adam Johnson J granted the injunction to continue until 11/5/2023. Service of his 11/5/2022 Order and other documents was effected as required by paragraph 12 of that Order: see David Holland #5 pa 5-7 at **B1176-1177**.

Service of the current applications

8. The current 2 applications (relief from sanctions and injunction) were served as required by pa 16 of the 11/5/2022 Order at **B1248**, to be confirmed by David Holland #6 (**filed separately**).

Abridging time

9. By pa 17 of that Order at **B1249**, service of the 2 applications was deemed on **[10/5/2023]**.
10. Since service was less than 3 days before the hearing on 11/5/2023 (required by CPR 23.7(1)(b)), Cs seek an order that sufficient notice has been given, under CPR 23.7(4), for both applications – draft Order pa 2 will need amending.

Relief from sanctions – service of the Particulars of Claim

11. By oversight, Cs omitted to seek an Order that service by the alternative methods should apply to the Particulars of Claim. So Bacon J's Order of 21/4/2022 pa 14 did not refer to the Particulars of Claim – **B1224**.
12. Nevertheless, the Particulars of Claim was “served” by the methods prescribed by Bacon J's Order of 21/4/2022 pa 14. That “service” is evidenced by David Holland #2 pa 6 at **B980**.
13. The oversight remained unnoticed before Adam Johnson J, and until this renewal application was prepared.
14. CPR 7.4(1)(b) required service be within 14 days of service of the Claim Form. Hence an application for relief from sanctions under CPR 3.9 is required, and (1) an Order that

service be dispensed with (since all the “alternative service” steps required by Bacon J’s Order were taken), or (2) an extension of time to serve by an alternative method (by a stated date), or possibly (3) an order under **CPR 6.27** and **6.15(2)** that steps already taken are good service (founded on the original application for alternative service).

15. The application is explained in David Holland #4 at **B1205**, which addresses the 3-stage test for relief from sanctions.
16. The draft Order pa 1 deals with relief from sanctions, at **B1047**.

The Claimants’ business

17. C1 is a leading energy company in the UK, specialising in the production, storage and distribution of refined petroleum products, and is a major supplier of road transport and jet fuels within the UK economy. It operates a network of interconnected oil refinery and terminal facilities, including the **Stanlow** refinery and other oil terminal facilities at **Tranmere** and **Northampton** – the “**Sites**” (UK map **B78**). The latter 2 are operated through subsidiary companies C2 and C3. See Mr Barden pa 8, 9, 10 at **B35**.
18. C2 is a wholly owned subsidiary of C1 – Mr Barden #1 pa 15 at **B41**, company structure at **B79**.
19. C3 is a subsidiary of C1 – Mr Barden #1 pa 27 at **B44**.

The 3 subject Sites – use and title

20. The 3 Sites the subject of this application are at **Stanlow, Tranmere** and **Northampton**. A fourth site at Kingsbury is jointly owned with Shell, but operated by Shell and is the subject of other litigation.
21. Plans for the 3 Sites are found in the bundle: Stanlow - **B26 / B567**, Tranmere – **B27 / B650**, Northampton – **B28 / B568**.

Stanlow Refinery and Terminal

22. The Stanlow Refinery and Terminal Site is c. 1900 acres on the S side of the Mersey estuary at Ellesmere Port. It is a key strategic, national and regional asset, part of critical infrastructure, producing over 16% of the total output of road transport fuels in the UK annually. It produces refined fuel products, stores crude oil and refined fuel

products and operates a road terminal business. Refined products leave by pipelines, by road and by boat along the Manchester Ship Canal. Mr Barden #1 pa 13-14 at **B40**.

23. 300-400 road fuel tankers visit each day, together with heavy goods vehicles and c. 1000 people attend the refinery each day – Mr Barden #1 pa 20 at **B42**.

Title to Stanlow

24. C1 owns Stanlow Refinery under various registered freehold and leasehold titles. Parts are subject to leases to C2 (hatched blue on **B26 / B567**), and leases to others (hatched orange on **B26 / B567**) – Mr Barden #1 pa 11, 15, 16, 17 at **B35-41**.
25. Primary access to the Stanlow site is by a private road “Oil Sites Road”:
- 25.1. Its eastern section is shown by a purple line running to point “A” on **B26 / B567** which lies within C1’s registered freehold title – Mr Barden #1 pa 18 at **B41**.
- 25.2. Its western section is shown by a yellow line on **B26 / B567**, which falls within a title owned by Peel L&P (Ports) Ltd (“Peel”). C1 has rights of way over the yellow route: see Mr Barden #1 pa 19 at **B42** (rights at **B607, B631, B646**).
26. In addition to point “A”, there are 2 further access points from the highway: “B” and “C” on **B26 / B567**. Points B and C are unsuitable for all vehicles and could not be used by emergency vehicles. See Mr Barden #1 pa 20, 97 at **B42, B63**.

Tranmere Terminal

27. Tranmere is used exclusively for the import of crude oil and diesel which is then transferred to Stanlow – Mr Barden #1 pa 22 at **B43**. The Tranmere site is run by C2 – Mr Barden #1 pa 24 at **B44**.

Title to Tranmere Terminal

28. Tranmere is leased to C1, then underlet to C2 which runs the site – Mr Barden #1 pa 23, 24 at **B43**, titles at pa 11 **B37-38**.
29. The main access to Tranmere is point “A” on **B27 / B650** – Mr Barden #1 pa 25 at **B44**.

Northampton Terminal

30. Northampton is used for storing fuel products – Mr Barden #1 pa 28 at **B44**.

Title to Northampton

31. C3 owns the freehold of the Northampton terminal – Mr Barden #1 pa 27 at **B44**, titles at pa 11, **B39**.
32. The main access to Northampton is point “A” on **B28 / B658** – Mr Barden #1 pa 29 at **B45**.

The 2022 Original Threat to the 3 Sites

33. JSO and XR were described in the judgment of Johnson J in *Shell UK Oil Products Ltd v. Persons Unknown* [2022] EWHC 1215 at [9] as protest groups committed to protesting in unlawful ways short of physical violence.
34. From 31/3/2022 there were multiple incidents of direct action undertaken by individuals involved in JSO and XR at oil refineries and terminals in England – Mr Barden #1 pa 47 at **B49**. They included blockading oil facilities and access ways, trespassing overground and underground, climbing and “locking on” to oil storage tankers and equipment etc – Mr Barden #1 pa 48 at **B50**. XR published statements which warned of further direct action and intention to continue disruption – Mr Barden pa 49, 50 at **B50**. Following XR’s statements, further direct action was taken in Essex and Kingsbury – Mr Barden #1 pa 51 at **B51**.
35. On 31/3/2022 and 1/4/2022 some 10 sites including Kingsbury were targeted for direct action by JSO and XR – Mr Barden #1 pa 61 at **B54-55**.
 - 35.1. On 1/4/2022 Kingsbury experienced blocking of exits / entries, protestors sat down in front of gates, individuals locked themselves to tankers and 48 were arrested. Mr Barden #1 pa 57-68 at **B53-56**.
 - 35.2. On 5/4/2022 protestors glued themselves to entrances of WOSL’s and Valero’s sites at Kingsbury – Mr Barden #1 pa 69-71 at **B57**.
 - 35.3. On 6/4/2022 protestors lay in front of site entrances, breached a perimeter and trespassed at WOSL and Valero’s sites at Kingsbury – Mr Barden #1 pa 72 at **B57**.
 - 35.4. On 7/4/2022 a protestor climbed on a tanker, 5 climbed on a pipework loading bay, 2 climbed on an ethanol tanker, 1 on a gas oil tank, and protestors let down tanker tyres – Mr Barden #1 pa 74 at **B57-58**.

- 35.5. Between 9 and 12/4/2022 further direct action including attempted tunnelling occurred, resulting in a further 22 arrests, and a total of 180 arrests to that date – Mr Barden #1 pa 77-81 at **B58-59**.
36. There was no direct action at Cs' 3 Sites.
- 36.1. However, the oil activities at the Sites means they fall within the category of sites to which the campaigns of direct action are targeted.
- 36.2. In March 2022 C1 became aware that JSO might target the Stanlow Site, so C1 released a media statement and increased security – Mr Barden #1 pa 53-55 at **B51-53**.
- 36.3. In Northampton, C3 took increased security measures – Mr Barden #1 pa 83 at **B60**.
- 36.4. At Tranmere, C2 implemented increased security measures – Mr Barden pa 84 at **B60**. Tranmere is reliant on local emergency response, so clear access is critical – Mr Barden #1 pa 85 at **B60**.
37. The threat was so significant that Kwasi Kwarteng MP (then Secretary of State for Business, Energy and Industrial Strategy) wrote to oil industry companies, directing them to increase security measures in response to JSO, and to manage protests – Mr Barden #1 pa 88 at **B61**, letter at **B848**.

Particular risks at the 3 Sites

38. The nature of the Sites means they are at heightened risk. Each Site is designated as a top tier site under the Control of Major Accident Hazards Regulations 2015 (“COMAH”) and is potentially dangerous due to the quantity of dangerous substances present on each site – Mr Barden #1 pa 37 at **B46**.
39. Disruption would have an immediate impact on supplying regional and national markets, and tankers would disrupt traffic as they could not access the Sites. In the event of trespass, an unplanned shut-down may be required, which carries a significant risk of apparatus failure with potential unintended consequences. Mr Barden #1 pa 91, 92 at **B61-62**.

Stanlow

40. Stanlow produces 9.4 billion litres of fuel a year – Mr Barden pa 93 at **B62**. That equates to 25 million litres a day. Blockage of Stanlow’s Oil Sites Road would require consideration of an unplanned emergency shut-down, since the 2 other access routes are inadequate – Mr Barden #1 pa 96, 97 at **B63**. Shut-down brings higher risk – Mr Barden #1 pa 91, 98 at **B61, B63**. At that time of higher-risk shut-down, any blockade would compromise access by emergency services – Mr Barden #1 pa 98 at **B63**.
41. Even mobile phone use by protestors bears the risk of igniting vapours – Mr Barden #1 pa 105 at **B65**. Other tankers can release hydrogen sulphide (a poisonous gas) and site areas contain hydrogen fluoride (an acidic liquid / gas) – Mr Barden #1 pa 105 at **B65**.
42. Temporary closure would adversely impact the local transport network, as vehicles build up, unable to load. A shortage at fuel stations and airports would result. Even a 1-day closure could result in outages across the North of England. Mr Barden #1 pa 110, 112 at **B66-67**.

Tranmere and Northampton

43. Direct action at Tranmere or Northampton would likewise impact ability to supply – Mr Barden #1 pa 111 at **B67**.

Financial impact

44. Closure could result in daily lost revenue in the multi-million pounds – Mr Barden #1 pa 113 at **B67**.

Risk proved to Bacon J and Adam Johnson J

45. Risk sufficient to grant precautionary (*quia timet*) injunctions in April and May 2022 was proved to the satisfaction of both Bacon J and Adam Johnson J.

Ongoing threat

46. The threat is ongoing.
47. Protests are ongoing. For example, the judgment in *Transport for London v. Lee* [2023] EWHC 402 at [13] records more than 22 protests between November 2022 and February 2023.

48. Other oil producers have sought and obtained injunctive relief this year, including Valero in January 2023 for 12 months, Exolum Pipeline Systems in January 2023 for 13 months – Mr Barden #2 pa 14 at **B1073**.
49. The National Highways Ltd and local authorities have sought and obtained injunctions against protestors which continue well past May 2023, including in the vicinity of oil refineries and terminals – Mr Barden #2 pa 15 at **B1075-1076**.
50. The particular risks still apply to Cs’ 3 Sites – Mr Barden #2 pa 16 at **B1077**.
51. Although there has been no breach of the 21/4/2022 or 11/5/2022 Orders in this case – Mr Barden #2 pa 18 at **B1077** – that perhaps reflects their effectiveness, not the absence of real and imminent risk of damage.
52. The ongoing risks are proved by:
 - 52.1. Other oil operators’ recent applications – Mr Barden #2 pa 21, 22 at **B1078**;
 - 52.2. Breach by protestors of other injunctions in July, August and September 2022 – Mr Barden #2 pa 23, 24 at **B1078-1079**;
 - 52.3. Continued protests against oil producers to April 2023 – Mr Barden #2 pa 26 at **B1080**;
 - 52.4. Continued protests at other venues, against use of oil to April 2023 – Mr Barden #2 pa 28 at **B1080-1082**;
 - 52.5. The ongoing position of JSO and XR, that they will protest – Mr Barden #2 pa 30-32 at **B1082**.

THE LAW

53. The relevant law was distilled by Johnson J in *Shell v Persons Unknown* [2022] **EWHC 1215** at [23] into 12 points, which incorporate the 7-point guidance given in *Canada Goose UK Retail Limited v Persons Unknown* [2020] **1 WLR 2802** at [82], approved in *Barking and Dagenham LBC v Persons Unknown* [2023] **QB 295** at [55], [56], [89]:

- 53.1. (1) There is a serious question to be tried: *American Cyanamid v Ethicon* [1975] AC 396 per Lord Diplock at 407G.
- 53.2. (2) Damages would not be an adequate remedy for the claimant, but a cross undertaking in damages would adequately protect the defendants, or
- 53.3. (3) The balance of convenience otherwise lies in favour of the grant of the order: *American Cyanamid* per Lord Diplock at 408C-F.
- 53.4. (4) There is a sufficiently real and imminent risk of damage (a tort being committed) so as to justify the grant of what is a precautionary injunction: *Islington London Borough Council v Elliott* [2012] EWCA Civ 56 per Patten LJ at [28], *Ineos Upstream* [2019] 4 WLR 100 per Longmore LJ at [34], *Canada Goose* [2020] 1 WLR 2802 per Sir Terence Etherton MR at [82(3)].
- 53.5. (5) The prohibited acts correspond to the threatened tort, and only include lawful conduct if there is no other proportionate means of protecting the claimant's rights: *Canada Goose* at [78] and [82(5)].
- 53.6. (6) The terms of the injunction are sufficiently clear and precise: *Canada Goose* [2020] 1 WLR 2802 at [82(6)].
- 53.7. (7) The injunction has clear geographical and temporal limits: *Canada Goose* [2020] 1 WLR 2802 at [82(7)] (as refined and explained in *Barking* [2023] QB 295 per Sir Geoffrey Vos MR at [79] - [92]).
- 53.8. (8) The defendants have not been identified but are, in principle, capable of being identified and served with the order: *Canada Goose* [2020] 1 WLR 2802 at [82(1)] and [82(4)].
- 53.9. (9) The defendants are identified in the Claim Form (and the injunction) by reference to their conduct: *Canada Goose* [2020] 1 WLR 2802 at [82(2)].
- 53.10. (10) The interferences with the defendants' rights of free assembly and expression are necessary for, and proportionate to, the need to protect the claimant's rights: **Articles 10(2) and 11(2) of the European Convention on Human Rights ("ECHR")**, read with **section 6(1) of the Human Rights Act 1998**.

53.11. (11) All practical steps have been taken to notify the defendants: **section 12(2)** of the **Human Rights Act 1998**.

53.12. (12) The order does not restrain “publication”, or, if it does, the claimant is likely to establish at trial that publication should not be allowed: **section 12(3)** of the **Human Rights Act 1998**.

Preliminary: the causes of action

54. Trespass and nuisance are the applicable causes of action.

54.1. Trespass is an entry upon Cs’ land without permission.

54.2. Nuisance is “... *an act or omission which is an interference with disturbance or annoyance to a person in the exercise or enjoyment of ... his ownership or occupation of land or some easement, profit or other right used or enjoyed in connection with the land ...*”: see **Clerk & Lindsell on Torts 23rd Ed pa 19-01**.

That would include interference with the private right of way over the yellow route at Stanlow.

54.3. Interference with access to / from private land, from / to the highway is also a private nuisance: *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC Ch 2945 at [42] per Morgan J, **Halsbury’s Laws vol 55 pa 261, Clerk & Lindsell pa 19-180**.

(1) Serious question to be tried

55. There is plainly a “serious question to be tried”, given the trespasses at other sites in the past and private nuisance by blockages of entrances at other sites.

(2) Damages not an adequate remedy for Cs, but cross-undertaking sufficient for Ds

56. Damages would be no adequate remedy: (1) trespass or blockade might cause a shut-down with increased safety risk; (2) traffic disruption and fuel shortage disruption across the region cannot be remedied in damages; (3) site shut-down would cause millions of pounds per day lost revenue and there is no evidence Ds could pay.

57. Cs have offered the cross-undertaking. They are clearly able to pay.

(3) Or, balance of convenience sufficient in favour of an injunction

58. It is not strictly necessary to consider this limb, if the previous limb is satisfied.
59. The balance weighs in favour of preventing trespass and nuisance, since protest can be made elsewhere, lawfully, and without risks associated with site shut-down, traffic disruption, fuel shortage disruption and very substantial lost revenue.

(4) Sufficiently real and imminent risk of damage so as to justify a precautionary / pre-emptive injunction

60. “Imminent” indicates that the injunction must not be granted prematurely – Russell LJ in *Hooper v. Rogers* [1975] Ch 43 at p49D. What matters is the probability of damage, and likely gravity of damage, rather than mere imminence – Etherton MR in *Network Rail Infrastructure v. Williams* [2019] QB 601 at [71].
61. The risk is very real. There were trespasses at other sites including Kingsbury a year ago. Injunctions in other cases were breached in the summer of 2022. Protests have continued into 2023, evidenced in the decided cases (e.g. *TfL v Lee* [2023] EWHC 402 at [13]). Protests have continued in 2023 at other venues including Eversheds’ offices in Nottingham, Birmingham, Cardiff and London, the House of Lords, Barclays Bank in Leeds, the Herbert Museum in Coventry and the World Snooker Championship in Sheffield – Mr Barden #2 pa 28 at **B1080-1082**.
62. A temporary cessation in XR protesting at the end of 2022 ended soon after, given XR’s disruption at Eversheds in February 2023, their disruption at the House of Lords in Feb 2023 their protest march across London to Shell HQ in April 2023 – Mr Barden #2 pa 28.4, 28.5, 26.4 at **B1081, 1080**.
63. Clearly protesting continues. Cs must remain targets, given their business. If protest is directed at Cs’ Sites, by way of trespasses or blockades, which cause an emergency shut-down, there is a substantial probability of grave and irrecoverable damage. The financial loss alone is substantial and irrecoverable. The possible health and safety consequences of an emergency shut-down are far worse.

(5) The prohibited acts correspond to the threatened tort and only include lawful conduct if there is no other proportionate means of protecting Cs' rights

64. Only acts of trespass and nuisance are prohibited by the proposed injunction. No lawful acts are prohibited.

(6) The terms of the injunction are sufficiently clear and precise

65. The wording is precise. It is the same as previous wording approved by Bacon J and Adam Johnson J.

66. The prohibited acts do not refer to a legal cause of action such as trespass or nuisance – *Canada Goose* at [82(6)]. Nor do they refer to intention – *Canada Goose* at [82(6)].

(7) The injunction has clear geographical and temporal limits

67. The geography is clear from the draft Order which includes plans. The proposed duration is 12 months.

68. There is no practical difference between interim and final orders in “persons unknown” cases, and both should be kept under review, time limited to one year in relation to encampments: *Barking and Dagenham LBC v Persons Unknown* [2023] QB 295 at [77], [89], [107].

69. In *Shell v Persons Unknown* [2022] EWHC 1215 at [49], one year was considered apt, because the pattern of protest is unpredictable, and providing a shorter period might mean the Court is in no better position to predict the (duration) of relief. That is also true here.

70. There is a variation provision in the draft Order, which would allow any Defendant to apply to vary, which necessarily includes varying the duration.

(9) The defendants are identified in the Claim Form (and the injunction) by reference to their conduct

71. The Defendants are identified by reference to the 3 causes of action and 3 sites:

71.1. D1, D4 and D6 are trespassers at C1, C2 and C3’s sites at Stanlow, Tranmere and Northampton;

- 71.2. D2 are those who interfere with C1's yellow private right of way to the Stanlow site – private nuisance;
- 71.3. D3, D5, D7 are those who obstruct the highway entry / exit at Stanlow, Tranmere and Northampton – private nuisance.
72. That style of naming was used in *Ineos Upstream Ltd v. Persons Unknown*. Although Morgan J expressed concerns about the style at first instance [2017] EWHC Ch 2945 at [119], he rhetorically asked at [119] whether individuals became parties by their unilateral action which was forbidden by the Order, and answered in the affirmative at [120] – [123]. The style of naming was approved on appeal at [2019] 4 WLR 100 at [29], [30]. It was again approved by the CA in *Canada Goose UK Retail Ltd v. Persons Unknown* [2020] 1 WLR 2802 at [82(2), (4)].
73. The style must refer to unlawful activities at a geographical location. In *Canada Goose* the original naming was too broad, as it would include lawful protestors hundreds of miles away – at [84], [85]. Our naming style does not offend that principle.

(8) The defendants have not been identified but are, in principle, capable of being identified and served with the order

74. Since there have been no breaches of the Orders made on 21/4/2022 or 11/5/2022, there are no Defendants who can be specifically identified yet, nor be added by name.
75. The proposed draft Order provides for service by an alternative method, in the form ordered on 21/4/2022 and 11/5/2022. Those methods of alternative service are bound to bring the Order to the attention of protestors, since (1) the papers will be in boxes at the relevant Site entrances where protests might occur, (2) there will be notices at those entrances, (3) emails will be sent to 5 email addresses for JSO and XR notifying them of the papers available on Cs' website.

(10) Articles 10(2) and 11(2) of the European Convention on Human Rights

76. Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) are qualified rights. They provide no defence for Ds in this case.
- 76.1. They do not permit trespass onto private property: *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 at [36].

76.2. Equally they do not permit interference with the right to enter / exit, from / to the highway: Barling J in *Secretary of State for Transport v. Persons Unknown* [2018] EWHC 1404 at [58].

76.3. Equally, deliberately obstructing traffic is not at the core of the rights: *DPP v. Cuciurean* [2022] QB 888 at [36], [45]. So Articles 10 and 11 cannot permit interference with C1's right of way over the yellow road (both (1) because it would interfere with a private right of way, (2) it would amount to a trespass, albeit on Peel's land).

77. The proposed injunction does not prevent freedom of expression or assembly, it merely prevents that happening by way of very limited trespasses and nuisances.

(11) Section 12(2) Human Rights Act 1998

78. Section 12(1) HRA provides that s.12 is engaged where relief might affect the exercise of the Article 10 right. It is consequently engaged here.

79. S.12(2) provides that no relief can be granted unless the Court is satisfied either (a) Cs have taken all practical steps to notify Ds of this application, or (b) there are compelling reasons why Ds should not be notified. Since Adam Johnson J ordered service by alternative methods (Order 11/5/2022 pa 16 at **B1248**), and those methods have been complied with for this application (David Holland #6 – **filed separately**), the requirement of “all practical steps” is satisfied. Compare *Shell v Persons Unknown* [2022] EWHC 1215 at [64] – [65].

(12) Section 12(3) HRA 1998

80. S.12(3) further requires that no relief is to be granted to restrain “publication” before trial, unless the Court is satisfied that Cs are “likely” to establish that publication should not be allowed.

81. In *Shell v Persons Unknown* [2022] EWHC 1215 at [66] – [76] Johnson J considered s.12(3) was not engaged in such protestor injunctions, because preventing protestors from tortious action did not expressly restrain publication of anything, nor did it have that effect. The protestors could publish anything they wished without breaching the injunction. “Publication” should not be given an artificially broad meaning to cover demonstrative acts of trespass during a protest – at [70]. That must be correct.

82. If that is wrong, and s.12(3) is engaged, both Bacon J and Adam Johnson J were satisfied the requirement was met: it was “likely” Cs would succeed at a final trial. That must be true: it must be “likely” that a trial court would hold that protesters could not commit trespass on oil refineries and terminals, nor private nuisance in blockading entrances and rights of way, particularly given the health and safety consequences, and the financial consequences. In this context, “likely” simply means “more likely than not” – *Cream Holdings Ltd v. Bannerjee* [2005] 1 AC 253 at [22].

Final relief?

83. No final relief is sought by Cs yet. In *Barking and Dagenham LBC v Persons Unknown* [2023] QB 295 at [77] Sir Geoffrey Vos MR took the view that there was no meaningful distinction between interim and final relief in “persons unknown” injunctions, since the Court will keep the injunction under review in either case. However, that decision is currently the subject of appeal.
84. Since there has been no direct action against Cs’ 3 sites yet, and since *Barking* may be overturned such that final injunctions against “persons unknown” may be inapt, it is currently considered that interim relief is the better course.

Alternative service

85. Adam Johnson J’s existing Order for alternative service pa 12-17 at **B1248** continues to apply. A similar same form of wording is continued in the proposed draft Order pa 14-17, with the additional word “documents”, though there is no new application for alternative service.

Draft Order

86. The draft Order at **B1045** reflects the above. It includes the cross-undertaking at Sch 1.

Bruce Walker
Enterprise Chambers
Tuesday 9 May 2023