Neutral Citation Number: [2024] EWHC 3130 (KB)

Claim 1: No: QB-2022-001241 ("Haven Claim")
Claim 2: No: QB-2022-001259 ("Tower Claim")
Claim 3: No: QB-2022-001420 ("Petrol Stations Claim")

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/12/2024

Before :
Mr Justice Dexter Dias

- -

Between :

(1) Shell U.K. Limited

Claimant: Claim 1

-and-

PERSONS UNKNOWN ENTERING OR REMAINING AT THE CLAIMANT'S SITE KNOWN AS SHELL HAVEN, STANFORD-LE-HOPE (AND AS FURTHER DEFINED IN THE PARTICULARS OF CLAIM) WITHOUT THE CONSENT OF THE CLAIMANT, OR BLOCKING THE ENTRANCES TO THAT SITE

Defendants: Claim 1

(2) Shell International Petroleum Company Limited

Claimant: Claim 2

-and-

PERSONS UNKNOWN ENTERING OR REMAINING IN OR ON THE BUILDING KNOWN AS SHELL CENTRE TOWER, BELVEDERE ROAD, LONDON ("SHELL CENTRE TOWER") WITHOUT THE CONSENT OF THE CLAIMANT, OR DAMAGING THE BUILIDNG, OR DAMAGING OR BLOCKING THE ENTRANCES TO THE SAID BUILDING

(3) Shell U.K. Oil Products Limited

Claimant: Claim 3

-and-

PERSONS UNKNOWN DAMAGING AND/OR BLOCKING THE USE OF OR ACCESS TO ANY SHELL PETROL STATION IN ENGLAND AND WALES, OR TO ANY EQUIPMENT OR INFRASTRUCTURE UPON IT, BY EXPRESS OR IMPLIED AGREEMENT WITH OTHERS, IN CONNECTION WITH ENVIRONMENTAL PROTEST CAMPAIGNS WITH THE INTENTION OF DISRUPTING THE SALE OR SUPPLY OF FUEL TO OR FROM THE SAID STATION

-and-

14 named defendants, including:
Emma Ireland (D7)
Charles Philip Laurie (D8)

Defendants:
Claim 3

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Myriam Stacey KC and Joel Semakula (instructed by **Eversheds Sutherland (International) LLP**) for the **Claimants**
Emma Ireland (D7, Claim 3) in person
Charles Philip Laurie (D8, Claim 3) in person
No other defendant appeared or was represented

Hearing dates: 22-23 October 2024
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JUDGMENT

Approved Judgment

This judgment was handed down remotely at 10.30 am on 5th December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Dexter Dias

Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. To assist the parties and the public to follow the court's line of reasoning, the text is divided into 13 sections and four annexes as set out in the table below.

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§I.

INTRODUCTION

3. Three claims are being heard together. The case overall is about whether the claimants, a number of companies in the Shell Group ("Shell"), should be granted final injunctions against Persons Unknown ("PUs") and a number of named environmental protesters, who took direct and deliberately disruptive action against Shell during 2022. Two of these protesters, Emma Ireland and Charles Philip Laurie, appear in person and addressed the court at length, carefully explaining why they, and many other protesters, have directed protests against Shell. The protesters include supporters or affiliates of environmental campaigning and activism groups including Just Stop Oil ("JSO"), Extinction Rebellion ("XR"), Youth Climate Swarm and Scientists' Rebellion.

4. The protesters strongly object to Shell's involvement in the extraction, distribution, supply and sale of fossil fuels, and thus Shell's involvement in the burning of the fuels. Such incineration releases carbon dioxide and greenhouse gases into the atmosphere through the process of hydrocarbon combustion. Indeed, the whole point of the complex supply chain created by the fossil fuel industry is the supply of such fuel for burning hydrocarbons. The three claims sharply raise, perhaps for the first time in these direct action environmental protest cases, the applicability and legal relevance of the Aarhus Convention ("Aarhus") (full title: Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), an international convention that the United Kingdom is party to, having ratified the treaty almost 20 years ago in 2005 (analysed in detail in **Section X. Aarhus Convention Analysis**). In particular, Ms Ireland and Mr Laurie rely on Article 3(8) of Aarhus, which provides insofar as material:

> "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement."

5. Their joint submission is that the grant of final injunctions would be "in breach of Aarhus" and "an excessive use of the law". More generally, the environmental protest groups in these three claims maintain that burning fossil fuel is a major contributor to the environmental emergency they wish to bring to the urgent attention of the general public and the Government. They intend to pressurise the Government into ending investment in fossil fuels and halting the issuing of licences and consents for their exploration, development and production. In pursuit of this aim, from the spring until the autumn of 2022, environmental groups, including JSO, directed protests at the fossil fuel industry, including Shell. Their tactics have been variable and have explored new ways to manifest their rights under the European Convention on Human Rights ("ECHR") to freedom of expression and assembly and association. Some people support them; others share their concerns about climate change and the environment but disapprove of their protest methods. In this it is important to remind oneself of the words of Sedley LJ in *Redmond-Bate v DPP* [2000] HRLR 249 at para 20:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

Shell maintains that the acts of the protesters have gone beyond mere irritation, but damage or create the strong probability of damaging Shell's substantive rights under the civil law. Various of the campaign groups have explicitly called for acts of "civil disobedience", a term with a long and complex history. It was defined by Rawls in his landmark *A Theory of Justice* (1971) as a

> "public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government." (p.364)

6. A key issue the court has been invited to examine by the defendants is whether peaceful acts contrary to the law and the rights of others under the civil law are protected by the Aarhus Convention, and if so, in what way. Previously in these claims, when Shell

sought to protect its commercial interests from what it said was unlawful protest activity, various judges of this court granted interim injunctions against a shifting array of defendants to prohibit direct action protest which targeted three different parts of Shell's broad business activities:

(1) "**Haven**": Shell's Haven Oil Refinery in Stanford-le-Hope, Essex, a substantial fuel storage and distribution facility (**Claim 1**);

(2) "**Tower**": Shell Centre Tower on London's South Bank, an administrative centre for Shell's UK operations (**Claim 2**);

(3) "**Petrol stations**": petrol stations which are retail customers of Shell, buying Shell's fuel and selling it on to the public and commercial customers via fuel pumps on petrol station forecourts (**Claim 3**).

7. This judgment must be read in conjunction with the previous judgments of this court. The relevant judgments are tabulated below for convenience and when mentioned will be referred to by the name of the judge (for example, "the Hill judgment" or "Johnson J at para XX"). In all of them, Shell succeeded in obtaining or renewing interim injunctions.

Judgment Date	**Site(s)**	**Expiry**	**Judge**	**Citation**
5 May 2022	Haven Tower	2 May 2023	Bennathan J	Ex tempore (no transcript available)
20 May 2022	Petrol stations	12 May 2023	Johnson J (hearing 13 May 2022)	[2022] EWHC 1215 (QB)
23 May 2023	All 3 claims	12 May 2024	Hill J (hearing dates: 25-26 April 2023)	[2023] 1 WLR 4358 [2023] EWHC 1229 (KB)
24 April 2024	All 3 claims	12 November 2024 or 4 weeks after final hearing (whichever later)	Cotter J	[2024] EWHC 1546 (KB)

8. Therefore, these are three separate but connected claims that have been managed together for administrative convenience and efficiency. I come to this case completely independently and have considered the claims afresh. Having received submissions for a day and a half, I reserved judgment and extended the interim injunctions pending the handing down of the court's decision. This is that decision.

9. Before turning to the specific details of the claims, there are four immediate contexts to the applications for final injunctive relief.

§II. FOUR CONTEXTS

Context 1: The burning of fossil fuels

10. It is a significant understatement to say that climate change and the existence or not of an environmental emergency are controversial, highly contested issues. There has been a mass of litigation in both civil and criminal courts as a result of this vital public debate. The most recent expression in the courts comes from our highest court, the Supreme Court, in *R (on the application of Finch on behalf of the Weald Action Group)(Appellant) v Surrey County Council and others (Respondents)* [2024] UKSC 20. Neither party had provided the court with this authority, but the court drew it to their attention and ensured both parties had an opportunity to read its material passages and make submissions on it. Lord Leggatt, delivering the unanimous judgment of the court, said at the very outset of the court's judgment:

> "1. Anyone interested in the future of our planet is aware by now of the impact on its climate of burning fossil fuels—chiefly oil, coal and gas. When fossil fuels are burnt, they release carbon dioxide and other "greenhouse gases"—so called because they act like a greenhouse in the earth's atmosphere, trapping the sun's heat and causing global surface temperatures to rise. According to the United Nations Environment Programme ("UNEP") Production Gap Report 2023, p 3, close to 90% of global carbon dioxide emissions stem from burning fossil fuels.
>
> 2. The whole purpose of extracting fossil fuels is to make hydrocarbons available for combustion. It can therefore be said with virtual certainty that, once oil has been extracted from the ground, the carbon contained within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming. This is true even if only the net increase in greenhouse gas emissions is considered. Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere: see UNEP's 2019 Production Gap Report, p 50, which reported, based on studies using elasticities of supply and demand from the economics literature, that each barrel of oil left undeveloped in one region will lead to 0.2 to 0.6 barrels not consumed globally over the longer term."

11. It is that "virtual certainty" noted by the Supreme Court that is of concern to the defendants in this case, objecting to Shell's involvement in the fossil fuel business due to its damaging impact, they maintain, on climate change and the environmental emergency. Shell's position is simple: its business is lawful. It has rights under the law. These rights have been violated by protesters and there is a real and imminent risk of future unlawful interference by direct action activists. This is Shell's rationale for seeking, securing and continuing injunctive relief. Shell seeks the court's legal protection against direct action which breaches its "civil rights" as the Supreme Court termed them in the recent seminal case of *Wolverhampton CC v London Gypsies and Travellers* [2024] 2 WLR 45 at para 167 ("*Wolverhampton*"). The term "civil rights", coming to prominence in the 1960s, here simply means Shell's rights under the civil law. It is important to note that the draft orders sought by Shell do not seek to prevent lawful protest. Direct action is action that seeks to prevent, obstruct or interfere with other people's ability to carry out their lawful activity. However, the two defendants

who appeared and represented themselves in the case claim that their acts of protest are lawful (or not unlawful) because they are necessary and proportionate infringements of Shell's rights. This is because their protests, and those of others, must be seen in the context of the damage they claim Shell is causing through its fossil fuel commercial activities. Indeed, Ms Ireland submits that if Shell properly understood the damage it is producing across the world, it would "consent" to the protests. Shell disputes this.

Context 2: The Special Rapporteur's mission

12. The second context is the recent "mission" visit to the United Kingdom by the United Nations Special Rapporteur on Environmental Defenders. This office was established in October 2021 by a consensus of parties to the Aarhus Convention, including the United Kingdom, to provide "a rapid response mechanism for the protection of environmental defenders" (UN Economic Commission for Europe website ("UNECE") unece.org; examined in detail later in **Section X**). This international treaty played a significant role in the submissions before me, and I must deal with its status in domestic law and assess its significance for the discretionary decisions the court is being invited to make in these claims.

13. The role of the Special Rapporteur is to "take measures to protect any person experiencing, or at imminent threat of experiencing, penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention". The Aarhus Convention protects not just individuals but non-governmental organisations seeking to safeguard the environment. The Special Rapporteur is "the first mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure" (both quotes UNECE, ibid.).

14. The Special Rapporteur who visited the United Kingdom is Michael Forst. Mr Forst was elected at an extraordinary meeting of signatory parties in October 2022. He visited between 10-12 January 2024. I set out parts of his mission report since it is cited by and relied on by both Ms Ireland and Mr Laurie, who took part in direct action protests at Shell's Cobham petrol station in August 2022 (Claim 3). They emphasise the significance of the mission report, coming as it does from an officeholder appointed by the parties to this important international convention that the United Kingdom has chosen to become party to. Mr Forst writes:

> "On 10 – 12 January 2024, I made my first visit to the United Kingdom since I was elected as UN Special Rapporteur on Environmental Defenders under the Aarhus Convention in June 2022. During my visit I met with government officials and with environmental defenders, including NGOs, climate activists and lawyers. I am issuing this statement in the light of the extremely worrying information I received in the course of these meetings regarding the increasingly severe crackdowns on environmental defenders in the United Kingdom, including in relation to the exercise of the right to peaceful protest.
>
> These developments are a matter of concern for any member of the public in the UK who may wish to take action for the climate or environmental protection. The right to peaceful protest is a basic human right. It is also an essential part of a healthy democracy. Protests, which aim to express dissent and to draw attention to a particular issue, are by their nature disruptive. The fact that they cause

> disruption or involve civil disobedience do not mean they are not peaceful. As the UN Human Rights Committee has made clear, States have a duty to facilitate the right to protest, and private entities and broader society may be expected to accept some level of disruption as a result of the exercise of this right.
>
> During my visit, however, I learned that, in the UK, peaceful protesters are being prosecuted and convicted under the Police, Crime, Sentencing and Courts Act 2022, for the criminal offence of "public nuisance", which is punishable by up to 10 years imprisonment. I was also informed that the Public Order Act 2023 is being used to further criminalize peaceful protest. In December 2023, a peaceful climate protester who took part for approximately 30 minutes in a slow march on a public road was sentenced to six months imprisonment under the 2023 law.
>
> …
>
> In addition to the new criminal offences, I am deeply troubled at the use of civil injunctions to ban protest in certain areas, including on public roadways. Anyone who breaches these injunctions is liable for up to 2 years imprisonment and an unlimited fine. Even persons who have been named on one of these injunctions without first being informed about it – which, to date, has largely been the case – can be held liable for the legal costs incurred to obtain the injunction and face an unlimited fine and imprisonment for breaching it. The fact that a significant number of environmental defenders are currently facing both a criminal trial and civil injunction proceedings for their involvement in a climate protest on a UK public road or motorway, and hence are being punished twice for the same action, is also a matter of grave concern to me.
>
> As a final note, during my visit, UK environmental defenders told me that, despite the personal risks they face, they will continue to protest for urgent and effective action to address climate change. For them, the threat of climate change and its devastating impacts are far too serious and significant not to continue raising their voice, even when faced with imprisonment. We are in the midst of a triple planetary crisis of climate change, biodiversity loss and pollution. Environmental defenders are acting for the benefit of us all. It is therefore imperative that we ensure that they are protected. While the gravity of the information I received during my visit leads me to issue the present statement to express my concerns without delay, I will continue to look more deeply into each of the issues raised during my visit and in the formal complaints submitted to my mandate. In this regard, I also look forward to engaging in a constructive dialogue with the Government of the United Kingdom in order to ensure that members of the public in the UK seeking to protect the environment are not subject to persecution, penalization or harassment for doing so.
>
> 23 January 2024"

Context 3: Abandonment of costs

15. The third context is a development in court at the very end of legal submissions on the second listed day of the hearing. Shell announced through counsel that it would not be seeking costs against the named defendants in this claim. This was announced in open court without notice to the court or the two attending defendants, Ms Ireland and Mr

Laurie. Shell's change of position caused them to be overwhelmed by emotion, given the strain they have been under as litigants in person. They had feared being bankrupted through an award of Shell's costs against them. The court directed that Shell's new stance on costs be reduced to writing so there could be no future misunderstanding. The script ultimately filed is in these terms:

1. "In this particular case [Claim 3], [Shell U.K. Oil Products Limited] has taken the decision not to seek costs against Named Defendants in the event that it secures the injunctive relief sought.
2. That decision has been arrived at in the specific circumstances of these proceedings including by having regard to the fact that: (i) the Court was addressed by unrepresented Named Defendants who acted in person and who had not breached the injunctions since they have been in place; (ii) substantive new issues of public importance were raised by those Defendants namely the applicability of the Aarhus Convention as a consideration to the Court's discretion under s.37 Senior Courts Act 1981 in the context of environmental protest injunctions, which had not been previously considered by any Court to date; and (iii) they conducted themselves throughout the proceedings in a respectful and constructive manner to everyone and were of assistance to the Court.
3. However, this is a bespoke decision which is limited to the present case and does not reflect Shell policy or its approach in any future case.
4. In deciding not to pursue costs in this case, C3 is giving up its *in principle* entitlement to its reasonable and proportionate costs against those persons who have been joined pursuant to the obligations under *Canada Goose* and against whom a final injunction is secured on the application of the usual costs rules CPR r.44.2(2)(a). Costs should follow the event and a successful party's entitlement to such costs is necessary in a democratic society for the purposes of Articles 10 and 11 of the ECHR. C3's *in principle* entitlement is reinforced by the fact that: (i) that the Named Defendants were invited to sign undertakings in order to avoid potential costs consequences; (ii) the consequence of refusing to sign such undertakings was repeatedly explained to them; and (iii) the desire to make submissions is no justification for refusing to sign such undertakings, in circumstances where interested persons may address the Court pursuant to CPR r.40.9 and/or the Cotter J Petrol Stations Order provide for any other person who "claims to be affected by the Order and wishes to vary or discharge it or to be heard at the final hearing" (§15)."

Context 4: The cautionary approach to PUs

16. Each of the three applications for final orders includes applications for injunctive relief against PUs. This is a serious step. It should not be underestimated or taken for granted as the senior courts have repeatedly observed. The Court of Appeal noted in *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA) ("*Ineos*") at para 31:

> "A court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance."

17. This cautionary note was repeated by the court in *Bromley LBC v Persons Unknown* [2020] 4 All ER 114 (CA) at para 34:

> *"*a court should always be cautious when considering granting injunctions against persons unknown.*"*

18. This is because the precautionary prohibition may seriously impinge on the right to freedom of expression and the right to protest of very large numbers of members of the public. This is why such injunctions are sometimes called injunctions "against the world" (contra mundum). While such far-reaching scope is sometimes authorised in intellectual property and privacy cases, when it occurs in public protest situations, its seriousness attains a different complexion. It is not something that can or should go through as a matter of routine, and is an aspect of these claims I have anxiously considered.

19. I have taken the non-conventional step of providing these four contexts at the beginning of the judgment to illustrate how complex, important and multifaceted these claims are. To offer another crude measure: the papers provided to me exceeded 8000 pages. Inevitably, this judgment, which must deal with all three claims, is lengthy. I have tried to simplify wherever possible. However, some of the complexity remains indispensable to an informed understanding of the court's reasoning, and for that there can be no apology.

§III. PARTIES

20. I now detail the parties to the claims. In all three claims the Shell corporate entity involved is represented by Ms Stacey KC and Mr Semakula. No defendant appeared in any of the claims save for Claim 3 (petrol stations), where Ms Ireland and Mr Laurie appeared in person. Both counsel and both litigants in person made submissions to the court, for which it is grateful. The court particularly wishes to note the thoughtful and respectful way in which Ms Ireland and Mr Laurie conducted themselves throughout. Further, the public gallery was invariably filled with their supporters, who also conducted themselves responsibly throughout. This demonstrates how this serious and contentious issue can be explored in public in a productive and constructive way.

Claim 1: Haven

21. In the first claim, the claimant is Shell U.K. Limited. This company is the freeholder of the Shell Haven Oil Refinery facility, on the Thames Estuary, south of Basildon and between Tilbury and Southend-on-Sea. The defendants are PUs. The torts relied on are trespass, public nuisance, private nuisance (interference with access from the public highway) and private nuisance (interference with private right of way).

Claim 2: Tower

22. In the second claim, the claimant is Shell International Petroleum Company Limited. This company is the freehold owner of the Shell Centre Tower, a large office building rising prominently on the South Bank's Belvedere Road near to the London Eye. The defendants are PUs. The torts relied on are trespass, public nuisance in the form of

obstruction of the highway, private nuisance in the form of interference with access from the highway, and private nuisance in the form of interference with private right of way.

Claim 3: Petrol stations

23. In the third claim, the claimant is Shell U.K. Oil Products Limited. This company supplies fuel to Shell-branded petrol stations across the country. While Shell has a proprietary right in the land on which some petrol stations are situated, it does not in all the outlets it wishes to protect through injunctive relief. Therefore, rather than trespass or nuisance, the tort relied on is a conspiracy to injure. The claim, put very shortly, is that jointly conducted direct action at or on petrol station forecourts creates very real risk of significant harm and injury. The defendants are PUs and a number of named defendants. Fourteen identified individuals were joined to the claim by Soole J at a review and case management hearing on 15 March 2024. They had been arrested on suspicion of criminal damage and/or aggravated trespass and/or conspiracy to destroy or damage property and/or wilful obstruction of the highway and/or causing a public nuisance and/or being in possession of an offensive weapon at the petrol station sites in connection with certain environmental protest groups.

24. On 16 October 2023, Shell's solicitors wrote to 29 of the 30 protesters identified as being arrested at petrol stations protests at Cobham Services and Acton Vale in August 2022. One person had died in the interim. Shell invited the remaining 29 protesters to agree to undertakings not to engage in certain protest activities, the breach of such promise exposing them to fine, asset seizure or imprisonment for contempt of court. A further letter was sent on 16 November 2023. Fourteen people gave undertakings. That left 15 people. One person gave an undertaking on 5 March 2024. Therefore, when the matter came before Soole J on 15 March, the remaining 14 people were joined to the claim as named defendants. Of these named defendants, on 26 September 2024, the third named defendant gave an undertaking in the terms the claimant sought. That left 13 defendants, including Ms Ireland as the seventh defendant and Mr Laurie as the eighth.

§IV. ISSUES

25. The issues before the court were:

    (1) Whether to grant final orders in respect of each of the three claims;

    (2) Whether the duration of the final orders should be 5 years;

    (3) Whether alternative service orders should be granted;

    (4) Whether to grant the application to remove the third defendant from Claim 3 (petrol stations) and consequently amend the claim form and particulars of claim to reflect the strike out.

26. I can deal with Issue 4 immediately. I have carefully reviewed the evidence and it is appropriate to grant the application to remove the third defendant in the petrol stations

claim. She has given the undertaking sought. I need say no more about it. That leaves the three prime issues for the court to determine.

§V. APPROACH TO JUDGMENT

27. I make plain that my approach to the judgment text is heavily informed by the approach of the Court of Appeal in *Re B (A Child) (Adequacy of Reasons)* [2022] EWCA Civ. 407. The court stated at para 58:

> "... a judgment is not a summing-up in which every possible relevant piece of evidence must be mentioned."

28. Therefore, I focus on what has been essential to my determinations in this case. Numerous side issues were thrown up. I do not need to resolve them all. The critical issues are clear. I focus on those as are necessary to determine the remaining three prime identified issues here. While I do not set out all the evidence the court received, and it is extensive, I emphasise that as part of my review I considered or reconsidered all the prime evidence. I reserved judgment for precisely that reason.

§VI. THE PROTESTS

29. The targeting of Shell in the first part of 2022 led to its seeking injunctive relief from the court. That said, Shell has repeatedly emphasised that it does not oppose lawful protest. The most recent evidential expression of this sentiment can be found in the statement of Paul Eilering, the Interim Cluster Security Manager for the Shell businesses' UK assets, in a statement filed on 1 July 2024 in support of the final injunctions:

> "The Claimants have not sought orders which stop protesters from undertaking peaceful protests whether near the Shell Sites or otherwise. That remains the case. The Claimants' concern continues to be the need to reinforce its proprietary rights and to mitigate the serious health, safety and wellbeing risks (to the Claimants' employees, contractors, visitors and indeed protesters themselves) posed by the kind of unlawful actions and activities which prompted the Claimants to seek injunctive relief back in April 2022."

30. Against this, the protesters maintain that Shell is in truth more concerned about its profits and brand reputation than the welfare of people or the planet. As Mr Laurie put it, Shell "just doesn't care" and "does not take the climate emergency seriously". As Ms Ireland says, if Shell did actually care, and understood the consequences of its actions, "it would consent to the protests". How have matters come to this? I now provide a brief account of the protests.

Haven

31. Mr Prichard-Gamble, a security manager with Shell, provided evidence that Shell became aware in early 2022 that environmental campaign groups, including XR and JSO, intended to target the fossil fuel industry, including Shell. XR called for a

campaign of civil disobedience, which would include "testing the limits of the protest law", to end "the fossil fuel economy". One of Shell's Distribution Operations Managers Ian Brown provided Bennathan J with a statement dated April 2022 detailing protest activity around Haven. This included a six-hour incident on 3 April 2022 whereby a group of protesters blocked the main access road to Haven, boarded tankers and blocked a tanker, requiring police attendance. Further, protesters tried to access the jetty at Haven; and similar incidents at fuel-related sites near to Haven caused concern that Haven was an imminent target. Deep anxiety arose because the Haven site is used for the storage and distribution of highly flammable hazardous products. Unauthorised access could cause a fire or explosion. Unauthorised access to the jetty could lead to a significant release of hydrocarbons into the Thames Estuary resulting in serious pollution and risk to health and the local environment. Thus Shell's stated concern was for the safety and well-being of Shell's staff and contractors, the protesters themselves and the local environment.

Tower

32. On 6 April 2022, what appeared like paint was thrown on the walls and above one of the staff entrances to the Tower, resulting in black marks and substantial spattering. On 13 April 2022 approximately 500 protesters closed on the Tower, banging drums and carrying banners stating, "Jump Ship" and "Shell=Death", clearly directed at Shell staff, several glued themselves to the reception area of the Tower and another Shell office nearby. On 15 April 2022, approximately 30 protesters with banners obstructed the road outside the Tower. On 20 April 2022, 11 protesters with banners, used a megaphone and ignited smoke flares. Protesters also inscribed the XR logo on the outside of the Tower. On several occasions the Tower was placed in security "lockdown".

Petrol stations

33. Benjamin Austin is a Health, Safety and Security Manager with Shell. He provided a statement to Johnson J about protests directed at petrol stations. He narrated how on 28 April 2022, two petrol stations on the M25 were the targets of protest activity. Forecourt entrances were blocked and the displays of fuel pumps were either obscured with spray paint or smashed with hammers. Kiosks were interfered with "to stop the flow of petrol", while protesters glued themselves to one another or fuel pumps or the roof of a tanker. In total, 55 fuel pumps were damaged, including 35 out of the 36 pumps at Cobham. They became unsafe for use and the forecourt was closed. Johnson J noted at para 9 that the protesters were "committed to protesting in ways that are unlawful, short of physical violence to the person". The campaign websites referred to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time". He continued at para 18:

> "18. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour does not disperse easily and can travel long distances. There is therefore close regulation …

19. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason. The evidence shows that at the protests on 28 April 2022 protesters used mobile phones on the forecourts to photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations." I was not shown any positive evidence as to the risks posed by spray paint, glue or other solvents in the vicinity of fuel or fuel vapour, but I was told that this, too, was a potential cause for concern."

34. On 24 August 2022, there was another protest at the Cobham M25 petrol station. This was the direct action that Ms Ireland and Mr Laurie took part in. The forecourt was blocked by seated protesters. Two petrol pump screens were smashed. Ms Ireland did not do this. Mr Laurie had intended to smash petrol pump screens, but "changed course", as he put it in his witness statement, when he saw police at the scene. He glued himself to the ground instead, blocking the forecourt. Both Ms Ireland and Mr Laurie were arrested. They stand trial at Winchester Crown Court in August 2025 and are on bail pending that hearing.

§VII. INJUNCTION TERMS

35. The future acts of protest that the claimants seek to restrain vary according to the site. The shared intention is to avoid interference with the claimants' right under the civil law not to be subject to the torts specifically pleaded by Shell.

Claim 1: Haven

36. In respect of Haven, the acts sought to be restrained are:

a. Entering or remaining upon any part of Haven without the consent of the Claimant;

b. Blocking access to any of the gateways to Haven the locations of which are identified and marked blue on "Plan 1" and "Plan 2" which are appended to this Order in the Third Schedule;

c. Causing damage to any part of Haven whether by:

i. Affixing themselves, or any object, or thing, to any part of Haven, or to any other person or object or thing on or at Haven;

ii. Erecting any structure in, on or against Haven;

iii. Spraying, painting, pouring, sticking or writing with any substance on or inside any part of Haven; or

iv. Otherwise.

Claim 2: Tower

37. The Tower injunction is applied for in similar terms to Claim 1.

Claim 3: Petrol stations

38. In respect of Petrol Stations, the acts relate to the disruption or interference with the supply or sale of fuel (to those premises or outlets connected to Shell). They are specified as:

a. Directly blocking or impeding access to any pedestrian or vehicular entrance to a Petrol Station forecourt or to a building within the Petrol Station;

b. Causing damage to any part of a Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;

c. Operating or disabling any switch or other device in or on a Petrol Station so as to interrupt the supply of fuel from that Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Petrol Station; and

d. Causing damage to any part of a Petrol Station, whether by:
   i. Affixing or locking themselves, or any object or person, to any part of a Petrol Station, or to any other person or object on or in a Petrol Station;
   ii. Erecting any structure in, on or against any part of a Petrol Station;
   iii. Spraying, painting, pouring, depositing or writing in any substance on to any part of a Petrol Station.

39. Each draft order further specifies that the defendant must not do any of these acts by means of another person acting on his/her/their behalf, or acting on his/her/their instructions, or by another person acting with his/her/their encouragement.

§VIII. LAW

40. Frequently in judgments, judges have the advantage of saying that the law is uncontroversial and can be stated shortly. I do not have that advantage. The law around protests and particularly injunctive relief against PUs - what is sometimes called "against the world" - has rapidly evolved in the last few years. Few areas of law in the recent past have undergone development of such rapidity accompanied by stringent scrutiny all the way to the Supreme Court. Therefore, the legal context for these claims is markedly different to that of a decade ago, or even five years previously, as the Court of Appeal noted in *London Borough of Barking and Dagenham and Others v Persons Unknown and Others* [2022] EWCA Civ 13 ("*Barking*").

41. This has, as Lord Reed put it in *Wolverhampton* at para 22:

> "illustrate[d] the continuing ability of equity to innovate both in respect of orders designed to protect and enhance the administration of justice … [and] in respect of orders designed to protect substantive rights."

42. I will set down the main features of this evolution, simplifying wherever possible, dealing first with the discretionary power confirmed by section 37 of the Senior Courts Act 1981 ("SCA 1981") before reviewing the main features of the common law. I stress that I have considered and adopt the law as previously set down in the claims at the interlocutory stage by Johnson, Hill and Cotter JJ in the judgments tabulated above, and am grateful to them for it.

1. Statute

43. The authority to grant an injunction in the exercise of the court's general "equitable discretionary power" (*Wolverhampton*, para 167) is set down in section 37 of the SCA 1981. It provides:

> "the High Court may by order (whether interlocutory or final) grant an injunction, in all cases in which it appears to the court to be just and convenient to do so"
>
> and
>
> "on such terms and conditions as the court thinks fit."

44. Injunctions are equitable in origin and section 37 is a statutory "confirmation" of how decisions about them should be approached (*Wolverhampton*, para 17). Section 37, as explained by Lord Scott in *Fourie v Le Roux* [2007] UKHL 1, simply confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 ("the 1873 Act") and still exists. That power was transferred to the High Court by section 16 of the 1873 Act (see Spry, *Equitable Remedies* (9th ed) at 333). The power of courts with equitable jurisdiction to grant injunctions is, subject to any statutory limitations, unlimited.

2. Common law

45. Survey of the authorities involving recent protest cases reveals different formulations of the "test" (if that it is) to be applied. This is inevitable: the senior courts have repeatedly stated that there is no uniform and invariable test or standard. This was recognised as long ago as *Hooper v Rogers* [1975] Ch 43, where at 50, Russell LJ, giving the judgment of the Court of Appeal said:

> "In different cases, differing phrases have been used in describing circumstances in which mandatory injunctions and quia timet injunctions will be granted. In truth, it seems to me that the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant
> circumstances."

46. In this case, while recognising the existence of no "absolute standard" to definitively measure how to do justice between the parties, I adopt the approach of the Supreme Court in *Wolverhampton* at para 218. The claimant

> "must satisfy the court by full and detailed evidence that there is a compelling justification for the order sought (see para 167(i) above). There must be a strong probability that a tort or breach of planning control or other aspect of public law is to be committed and that this will cause real harm. Further, the threat must be real and imminent."

47. For assistance, I add para 167(i) since it was referred to:

> "if:
> (i) There is a compelling need, sufficiently demonstrated by the evidence, for the protection of civil rights (or, as the case may be, the enforcement of planning control, the prevention of anti-social behaviour, or such other statutory objective as may be relied upon) in the locality which is not adequately met by any other measures available to the applicant local authorities (including the making of byelaws). This is a condition which would need to be met on the particular facts about unlawful Traveller activity within the applicant local authority's boundaries."

48. Linden J was, to my mind, right to sound a note of caution in *Esso Petroleum v PUs* [2023] EWHC 1837 (KB) at para 63 about reducing any formulation to an invariable test:

> "With respect, I confess to some doubts about whether the two questions which he [Marcus Smith J in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch)] identified are part of a *"test"* or a *"two stage"* test. To my mind they are questions which the Court should consider in applying the test under section 37 Senior Courts Act 1981, namely what is *"just and convenient"* but they are not threshold tests."

49. Linden J then went on quote from *Gee on Commercial Injunctions* (7th Edition) which says at 2-045:

> "There is no fixed or 'absolute' standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief. The graver the likely consequences, and the risk of wrongdoing the more the court will be reluctant to consider the application as 'premature'. But there must be at least some real risk of an actionable wrong."

50. This, it seems to me, must be right. This is precisely why the Supreme Court has identified questions of the probability of rights breach with attendant harm. The court will inevitably and rightly be concerned by the risk of very grave consequence and may be prepared to grant injunctive relief where the risk of occurrence is lower than a case where the harm is less severe. All these factors have to be weighed together. Therefore, *solely* for organisational purposes, and without suggesting the existence of a universal test, I examine the case approaching the relevant questions by separating out two vital factors that need to be assessed holistically:

> (1) **Consequences**: of conduct in terms of (a) breach of rights and (b) level of harm ("Limb 1");
> (2) **Risk**: of the conduct's future occurrence ("Limb 2").

51. The approach to be adopted when granting a final injunction in the context of protests against PU (including newcomers) is not materially altered by the decision of the Supreme Court in *Wolverhampton*. The Supreme Court confirmed that injunctions can be granted against PUs, including "newcomers" (para 167) and expressly stated at para 235 that:

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

52. Therefore, the following seven "procedural guidelines" in *Canada Goose v Persons Unknown* [2020] 1 WLR 2802 ("*Canada Goose*") at para 82 remain good law and must still be satisfied in claims for protest injunctions against PUs and have been applied in all subsequent protest injunction cases:

> "(1) The "persons unknown" defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The "persons unknown" defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the "persons unknown".
> (2) The "persons unknown" must be defined in the originating process by reference to their conduct which is alleged to be unlawful.
> (3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify quia timet relief.
> (4) As in the case of the originating process itself, the defendants subject to the interim injunction must be individually named if known and identified or, if not and described as "persons unknown", must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order.
> (5) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights.
> (6) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the defendant's intention if that is strictly necessary to correspond to the threatened tort and done in nontechnical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

> (7) The interim injunction should have clear geographical and temporal limits. It must be time limited because it is an interim and not a final injunction. We shall elaborate this point when addressing Canada Goose's application for a final injunction on its summary judgment application."

53. Ritchie J said in *Valero Energy Ltd v PU* [2024] EWHC 134 (KB) ("*Valero*") at para 57 that:

> "in summary judgment applications for a final injunction against unknown persons ("PUs") or newcomers, who are protesters of some sort, the following 13 guidelines and rules must be met for the injunction to be granted. These have been imposed because a final injunction against PUs is a nuclear option in civil law akin to a temporary piece of legislation affecting all citizens in England and Wales for the future so must be used only with due safeguards in place."

54. The Supreme Court stated in *DPP v Ziegler* [2021] UKSC 23 ("*Ziegler*") that if the PUs' rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction, a careful balancing exercise is required. The injunction must be necessary and proportionate to the need to protect the claimants' right.

55. The situation is different with trespass to private land. A landowner whose title is not disputed is prima facie entitled to an injunction to restrain a threatened or apprehended trespass on her or his land (*Snell's Equity* (34th ed) at para 18-012). Further, Convention rights under the ECHR do not confer a right to trespass onto private land. The basis for this conclusion is that the rights under Articles 9, 10 and 11 are qualified rights. This matter has been explored by the courts at senior level. In *Cuciurean v Secretary of State for Transport* [2021] EWCA 357, Warby LJ said:

> "9. The following general principles are well-settled, and uncontroversial on this appeal.
>
> (1) Peaceful protest falls within the scope of the fundamental rights of free speech and freedom of assembly guaranteed by Articles 10(1) and 11(1) of the European Convention on Human Rights and Fundamental Freedoms. Interferences with those rights can only be justified if they are necessary in a democratic society and proportionate in pursuit of one of the legitimate aims specified in Articles 10(2) and 11(2). Authoritative statements on these topics can be found in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 [43] (Laws LJ) and *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039, reflecting the Strasbourg jurisprudence.
>
> (2) But the right to property is also a Convention right, protected by Article 1 of the First Protocol ('A1P1'). In a democratic society, the protection of property rights is a legitimate aim, which may justify interference with the rights guaranteed by Article 10 and 11. Trespass is an interference with A1P1 rights, which in turn requires justification. In a democratic society, Articles 10 and 11 cannot normally justify a person in trespassing on land of which another has *the right to possession*, just because the defendant wishes to do so for the purposes of protest against government policy. Interference by trespass will rarely be a necessary and proportionate way of pursuing the right to make such a protest."

56. In *DPP v Cuciurean* [2022] EWHC 736 (Admin), an HS2 protest case before the Divisional Court, Lord Burnett CJ said:

> "45. We conclude that there is no basis in the Strasbourg jurisprudence to support the respondent's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg Court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at [47] and [52]). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of *destroying* the *essence* of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.
>
> 46. The approach taken by the Strasbourg Court should not come as any surprise. Articles 10, 11 and A1P1 are all qualified rights. The Convention does not give priority to any one of those provisions. We would expect the Convention to be read as a whole and harmoniously. Articles 10 and 11 are subject to limitations or restrictions which are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the 1994 Act. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and assembly would be destroyed. Legitimate protest can take many other forms."

57. For these reasons, in *HS2 v PUs* [2022] EWHC 2360 (KB), Julian Knowles J said at para 80:

> *"*In relation to defences to trespass, genuine and *bona fide* concerns on the part of the protesters about HS2 or the proposed HS2 Scheme works do not amount to a defence, and the Court should be slow to spend significant time entertaining these: *Samede*, [63]."

58. In similar vein, in *Halsbury's Law*s (5th ed) at para 325, it is said that generally "it is not a defence to show that although the act complained of is a nuisance with regard to the highway, it is in other respects beneficial to the public."

§IX. ANALYSIS OF THE 15 FACTORS: PART I

59. To assist in the analysis, I reduce the "guidelines" Ritchie J identifies to tabular form for ease of reference, remaining indebted to him for his analysis. I perceive these to amount to a series of 15 factors that together form a vital checklist. I use the term "factor" to underline that these are matters for the court to examine and then weigh in the overall equitable discretionary exercise under section 37 of the SCA 1981. Once the court has evaluated the factors globally and holistically, an accurate decision on whether it is "just and convenient" to exercise the section 37 discretion in favour of granting the injunction applied for is possible. Only then may terms be properly determined. The statutory working of section 37 is deliberately framed as "may" grant not "must", and the court retains an overall equitable discretion whether to grant the injunction or not depending on the overall justice of the case. The court must exercise its necessarily wide discretion judicially. I take that to mean rationally, reasonably and based on the totality of evidence, fairly considered.

Factor	**Summary**
1.	Cause of action clearly identified
2.	Full and frank disclosure by claimant
3.	Sufficient evidence to prove claim
4.	No defence (or no realistic defence where no defence filed)
5.	Balance of convenience / compelling justification or need
6.	Proportionate interference with ECHR rights
7.	Damages not adequate remedy
8.	Clear identification of defendants: (a) Named defendants identified in claim form and injunction order by tortious acts prohibited (b) PUs capable of being identified and served
9.	Terms of injunction: (a) Sufficiently clear and precise (b) Only prohibiting lawful conduct where no other proportionate means to protect claimant's rights
10.	Correspondence between terms of injunction and threatened tort
11.	Clear and justifiable geographical limit
12.	Clear and justifiable temporal limit
13.	Service: all reasonable steps taken to notify defendants
14.	Right to set aside or vary
15.	Review

60. I now examine each of the 15 factors in turn, comprising as they do a structured and essential checklist.

1 Cause of action clearly identified

61. The next table sets down the prime elements of each of the torts pleaded by the claimants.

Trespass	(a) entry onto land in the possession of another (b) without justification or the other's consent
Private nuisance	(a) substantial and unreasonable interference (b) with the land of another or the enjoyment of that land
Public nuisance	(a) wrongful acts or omissions on or near a highway (b) causing the public ("all the King's subjects") or all members of an identifiable class proximate to the acts' operation (c) to be hindered or prevented from freely, safely and conveniently passing along the highway (d) [and] possessors of land must demonstrate substantial inconvenience or damage to them
Conspiracy to injure by unlawful means	(a) an unlawful act by the defendant (b) with the intention of injuring the claimant (c) pursuant to an agreement with others (d) which injures the claimant

Haven and Tower

62. These sites share a common feature: Shell has a proprietary right in the land. The torts relied on reflect that interest, being trespass to land and private nuisance. It is unarguable but that they have been clearly identified. As noted by Julian Knowles J in *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB) at para 85:

> "Private nuisance is any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land: *Bamford v Turnley* (1862) 3 B & S; *West v Sharp* [1999] 79 P&CR 327, 332:
>
> Not every interference with an easement, such as a right of way, is actionable. There must be a substantial interference with the enjoyment of it. There is no actionable interference with a right of way if it can be substantially and practically exercised as conveniently after as before the occurrence of the alleged obstruction. Thus, the grant of a right of way in law in respect of every part of a defined area does not involve the proposition that the grantee can in fact object to anything done on any part of the area which would obstruct passage over that part. He can only object to such activities, including obstruction, as substantially interfere with the exercise of the defined right as for the time being is reasonably required by him".

63. The unlawful interference with the claimant's right of access to its land via the public highway, where a claimant's land adjoins a public highway, can be a private nuisance (*Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29) ("*Cuadrilla*"). In *Cuadrilla* the Court of Appeal said at para 13:

> "The second type of wrong which the Injunction sought to prevent was unlawful interference with the claimants' freedom to come and go to and from their land.

> An owner of land adjoining a public highway has a right of access to the highway and a person who interferes with this right commits the tort of private nuisance. In addition, it is a public nuisance to obstruct or hinder free passage along a public highway and an owner of land specially affected by such a nuisance can sue in respect of it, if the obstruction of the highway causes them inconvenience, delay or other damage which is substantial and appreciably greater in degree than any suffered by the general public: see *Clerk & Lindsell on Torts*, 22nd ed (2017), para 20–181."

Petrol stations

64. The petrol stations claim sits in a different legal context as Shell does not possess proprietary rights or a sufficient degree of control over all the service station locations. For simplicity's sake, Shell relies on the tort of conspiracy to injure by unlawful means. The claim is that Shell has been the target of a coordinated campaign of protest activity directed at and intended to harm it economically and commercially by disrupting its supply and sale of fuel, which is a lawful activity. The elements of the tort are set out in *Cuadrilla* by Leggatt LJ (as he then was) at para 18 and in the immediately preceding table. This tort was relied on by Julian Knowles J in *Esso Petroleum v PUs* [2023] EWHC 2013 (KB). It was also examined and approved in connection with these claims by Johnson J in *Shell U.K. Oil Products Limited v Persons unknown* [2022] EWHC 1215 (QB) at para 26.

65. On element (a), it is not necessary for the claimant to establish that the underlying conduct is actionable by itself. This was noted by Johnson J at para 29:

> "29. For the purposes of the present case, it is not necessary to decide whether a breach of statutory duty can found a claim for conspiracy to injure, or whether every (other) tort can do so. It is only necessary to decide whether the claimant has established a serious issue to be tried as to whether the torts that are here in play may suffice as the unlawful act necessary to found a claim for conspiracy to injure. Those torts involve interference with rights in land and goods where those rights are being exercised for the benefit of the claimant (where the petrol station is being operated under the claimant's brand, selling the claimant's fuel). Recognising the torts as capable of supporting a claim in conspiracy to injure does not undermine or undercut the rationale for those torts. It would be anomalous if a breach of contract (where the existence of the cause of action is dependent on the choice of the contracting parties) could support a claim for conspiracy to injure, but a claim for trespass could not do so. Likewise, it would be anomalous if trespass to goods did not suffice given that criminal damage does. I am therefore satisfied that the claimant has established a serious issue to be tried in respect of a relevant unlawful act."

66. On (b): the intention of the activities of the protesters is evident from their conduct and the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. That is a prime objective of their protests.

67. On (c): no one suggests that this was anything but a coordinated and agreed joint group protest.

68. On (d): there can be little debate about loss. The petrol stations were unable to sell fuel, with the forecourts being blockaded, petrol pumps damaged and the service station shut to the public. That was all part of the objective of the protest as a stepping stone to raising awareness about fossil fuels. There can be no doubt that the tort relied on by the claimant in the petrol stations claim has been clearly identified with evidence filed by the claimant going to each of the elements. This tort was considered in detail by Johnson J at para 30. He said:

> "The intention of the defendants' unlawful activities is plain from their conduct and from the published statements on the websites of the protest groups: it is to disrupt the sale of fuel in order to draw attention to the contribution that fossil fuels make to climate change. They are not solitary activities but are protests involving numbers of activists acting in concert. They therefore apparently undertake their protest activities in agreement with one another. Loss is occasioned because the petrol stations are unable to sell the claimant's fuel."

69. When the case came before Hill J for review, powerful argument was advanced by Mr Simblet KC on behalf of one defendant that reliance on wide-ranging economic torts, such as conspiracy to injure through unlawful means, was discouraged by the Court of Appeal in *Boyd v Ineos* [2019] 4 WLR 100. The court discharged those parts of an order based on public nuisance and unlawful means conspiracy, leaving only those based on trespass and private nuisance. Hill J concluded at para 129:

> "in *Cuadrilla*, the prohibitions were made out on the facts from claims in private nuisance and at para 81 the court described the prohibition corresponding to unlawful means conspiracy as "a different matter" on which Cuadrilla did not need to rely. However, as Ms Stacey highlighted, the discharge of the injunction based on conspiracy by the Court of Appeal in *Ineos* involved materially different facts, namely, a challenge to an injunction sought before any offending conduct had taken place; and terms which were impermissibly wide. In *Cuadrilla* at para 47 the Court of Appeal noted that the fact that the injunction had been made before any alleged unlawful interference with the claimant's activities had occurred was "important in understanding the decision" and I agree. In contrast, the injunction granted by Johnson J was based on past conduct having already occurred and was suitably narrow in focus."

70. I find in respect of each of the three claims that this requirement has been met.

2 Full and frank disclosure

71. With regard to PUs, the injunctions sought are without notice, by definition. As such, the claimant must act fairly in all material respects, including "a duty to act in the utmost good faith and to disclose to the court all matters which are material to be taken into account by the court in deciding whether or not to grant relief without notice, and if so on what terms" (*Gee on Commercial Injunctions* at para 9-001; there is nothing new in this: see *Thomas A. Edison Ltd v Bullock* (1912) 15 C.L.R. 679 at 682, per Isaacs J; *Dormeuil Freres SA v Nicolian Ltd* [1988] 1 WLR. 1362 at 1368).

72. In respect of named defendants, there remains a high duty of full and frank disclosure. Here Shell has filed and served many thousands of pages of evidence and background material. I detect no want of frankness as opposed to extensive and candid disclosure. It is noticeable that this point was not taken by any named or appearing defendant. I find this requirement met.

3 Sufficient evidence to prove claim

73. The two-limbed approach outlined by the Supreme Court in *Wolverhampton* is useful organisationally here.

Limb 1: strong probability

74. For the reasons given above, I am satisfied that should the acts that the claimants fear take place that there is a "strong probability" of a breach of the claimants' rights in civil law by committing a tort. In large measure the rationale of the direct action as opposed to other forms of protest is avowedly to interrupt, interfere and disrupt. The defendants' case is not that there is no interference, but that it is justified, in the sense of proportionate to the damage they claim Shell is causing.

Limb 2: real and imminent risk

75. As noted by Hill J, Mr Prichard-Gamble on behalf of Shell provided evidence of harm and risk (see Hill judgment at paras 38-40). He stated that (i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites, he states, presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them. In a recent statement, Mr Eilering states:

> "2.4 Each of the Injunction Orders have been carefully considered and drawn so as to ensure that they are not too wide and only prohibit activity which would be clearly unlawful.
>
> 2.6 The Injunction Orders have been obeyed and have acted as an effective deterrent against unlawful protest activity. They continue to have that deterrent effect and ensure that damage and harm is avoided."

76. Mr Prichard-Gamble has provided an updated witness statement emphasising that the risk of rights violation to Shell and risk of harm should it occur continues. Marcus Smith J addressed the question of future harm in his judgment in *Vastint* at para 31(5):

> "it is necessary to ask the counterfactual question: assuming no quia timet injunction, but an infringement of the claimant's rights, how effective will a more-or-less immediate interim injunction plus damages in due course be as a remedy for that infringement? Essentially, the question is how easily the harm of

> the infringement can be undone by an ex post rather than an ex ante intervention, but the following other factors are material:
>
> > (a) The gravity of the anticipated harm. It seems to me that if some of the consequences of an infringement are potentially very serious and incapable of ex post remedy, albeit only one of many types of harm capable of occurring, the seriousness of these irremediable harms is a factor that must be borne in mind."

77. In this case, Shell has filed evidence about grave concern that direct action protests could cause localised leaks and pollution through the release of highly toxic substances, serious or severe injury or death through combustion of dangerously flammable liquids, resulting in harm to employees, contractors, members of the public and protesters that cannot be or cannot be easily undone.

78. That evidence is compelling. Indeed, in respect of damaging petrol pumps, Ms Ireland has circulated the information about the risk it produces within protest "circles" and she now says that she would not endorse future protest action involving damage to petrol pumps due to the risk presented by it. Mr Laurie's position is more nuanced. Coming from his engineering background, he told the court that risk is not "binary". It exists along a spectrum and damaging petrol pumps "is not a straightforward situation". There is a "gradient of risk we all exist on". However, he recognised that "just because we think some form of protest is safe, that does not make it [objectively] safe".

79. The court accepts the evidence that direct action that involves damaging petrol pumps plainly carries with it the risk of serious injury and Ms Ireland is right to recognise and change her stance in light of that risk. Protests that may release the highly toxic and flammable substances that Shell store and supply plainly carries with it the associated danger of serious harm.

80. I will deal with general risk first before turning to three categories of defendants (1) Ms Ireland and Mr Laurie; (2) named defendants in Claim 3 (see Annex A for details); (3) PUs generally. I examine Ms Ireland's evidence before Mr Laurie simply because she precedes him in the list of named defendants and addressed the court first.

General risk

81. In terms of general risk of future direct action against Shell, I begin by noting the observations of Cotter J at para 41:

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

82. Cotter J added at para 43:

> "the Protest Groups had made comments reiterating that this is "an indefinite campaign of civil resistance" and (in March 2024) that "non violent civil resistant to a harmful state will continue with coordinated radical actions."

83. In June 2024, JSO repeated its statements that supporters will continue to take action to "demand necessary change" that this UK government "end the extraction and burning of oil, gas and coal by 2030" and will continue "the resistance" if the Government fails to "sign up to a legally binding treaty to phase out fossil fuels by 2030". Student members of JSO have posted that "[t]his November, hundreds of students are coming to London – this is going to be the biggest episode of civil disobedience this country has ever since. Be there, November 12." As Linden J put it in *Esso Petroleum Company Ltd v PUs* [2023] EWHC 1837 (KB) ("*Esso Petroleum*") at para 67:

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

84. Similarly, Ritchie J noted in *Valero* (at para 64):

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

85. I find that similar considerations apply to the direct action protests against Shell as at autumn 2024. In her careful analysis, Hill J noted at para 30 the ending of direct action protests at Haven following the injunction, but noted wider fossil fuel protests elsewhere:

> "30. There do not appear to have been any further unlawful protest incidents at the Haven. However, the evidence shows a significant number of incidents in relation to oil refinery sites between August 2022 and February 2023. These included protest action at a number of oil refineries located in Kingsbury. The main road used to access the site was closed as a result of protesters making the road unsafe, by digging and occupying a tunnel underneath it, access roads were also blocked by protesters performing a sit-down roadblock. Similar activity occurred at the Gray's oil terminal in West Thurrock in August/ September 2022. On 28 August 2022 eight people were arrested after protesters blocked an oil tanker in the vicinity of the Gray's terminal, climbing on top of it and deflating its tyres. On 14 September 2022 around fifty protesters acted in breach of the North Warwickshire local authority injunction in relation to the Kingsbury site."

86. Hill J then continued at para 39:

> "(i) the incidents described demonstrate a clear nationwide targeting of members of the wider Shell group of companies and its business operations since April/May 2022; (ii) such demonstrations will continue for the foreseeable future; and (iii) the injunctions need to be extended as they provide a strong deterrent

effect and mitigate against the risk of harm which unlawful activities at the sites would otherwise give rise to. Unlawful activity at the sites presents an unacceptable risk of continuing and significant danger to the health and safety of staff, contractors, the general public and other persons visiting them."

87. In respect of petrol stations, Hill J noted:

"18 Johnson J was provided with witness statements from Benjamin Austin, the claimant's health, safety and security manager, dated 3 and 10 May 2022. In his judgment, he explained that, on 28 April 2022, there were protests at two petrol stations (one of which was a Shell petrol station) on the M25, at Clacket Lane and Cobham. Entrances to the forecourts were blocked. The display screens of fuel pumps were smashed with hammers and obscured with spray paint. The kiosks were "sabotaged … to stop the flow of petrol". Protesters variously glued themselves to the floor, a fuel pump, the roof of a fuel tanker or each other. A total of 55 fuel pumps were damaged (including 35 out of 36 pumps at Cobham) to the extent that they were not safe for use, and the whole forecourt had to be closed: paras 12–13. Johnson J also referred to wider protests in April/early May 2022 at oil depots in Warwickshire and Glasgow: paras 14–15.

19 Johnson J explained that he had not been shown any evidence to suggest that XR, JSO or Insulate Britain had resorted to physical violence against others. He noted, however, that they are "committed to protesting in ways that are unlawful, short of physical violence to the person". He observed that their websites demonstrate this, with references to "civil disobedience", "direct action", and a willingness to risk "arrest" and "jail time": para 9.

20 He summarised the various risks that arise from these types of protest, in addition to the physical damage and the direct financial impact on the claimant (from lost sales), as follows [quoting paras 18-19 in the Johnson J judgment quoted at this judgment's para 33 ante, before continuing at para 21]:

> "21. Aside from the physical damage that has been caused at the petrol stations, and the direct financial impact on the claimant (from lost sales), these types of protest give rise to additional potential risks. Petrol is highly flammable. Ignition can occur not just where an ignition source is brought into contact with the fuel itself, but also where there is a spark (for example from static electricity or the use of a device powered by electricity) in the vicinity of invisible vapour in the surrounding atmosphere. Such vapour does not disperse easily and can travel long distances. There is therefore close regulation, including by the Dangerous Substances and Explosives Atmosphere Regulations 2002, the Highway Code, Health and Safety Executive guidance on "Storing petrol safely" and "Dispensing petrol as a fuel: health and safety guidance for employees", and non-statutory guidance, "Petrol Filling Stations – Guidance on Managing the Risks of Fire and Explosions."
>
> "22. The use of mobile telephones on the forecourt (outside a vehicle) is prohibited for that reason (see annex 6 to the Highway Code: "Never smoke, or use a mobile phone, on the forecourt of petrol stations as these are major fire risks and could cause an explosion."). The evidence shows that at the protests on 28 April 2022 protesters used mobile phones on the forecourts to

> photograph and film their activities. Further, as regards the use of hammers to damage pumps, Mr Austin says: "Breaking the pump screens with any implement could cause a spark and in turn potentially harm anyone in the vicinity. The severity of any vapour cloud ignition could be catastrophic and cause multiple fatalities. Unfortunately, Shell Group has tragically lost several service station employees in Pakistan in the last year when vapour clouds have been ignited during routine operations." I was not shown any positive evidence as to the risks posed by spray paint, glue or other solvents in the vicinity of fuel or fuel vapour, but I was told that this, too, was a potential cause for concern."

88. Hill J stated at para 21 that Johnson J:

> "noted the evidence that the campaign orchestrated by the groups in question looked set to continue and cited JSO's statement on its website that the disruption would continue "until the government makes a statement that it will end new oil and gas projects in the UK: para 16."

89. In the exhibit to his statement in the core bundle, Mr Eilering on behalf of Shell appends the online report of Shell's AGM. The report dated 21 May 2024 documents how protesters from "numerous" climate campaigning groups, including XR, disrupted the AGM by singing "Shell Kills", while outside the hotel where the meeting took place, protesters unfurled a sign saying "SHELL PROFITS KILL". Beyond this, Mr Eilering exhibits several hundred pages of articles and documents recording recent protest activity not only in the United Kingdom but internationally directed towards the fossil fuel industry. This documentation builds on the earlier filed statements by Mr Prichard-Gamble attesting to the ongoing threat to the business interests of Shell from those who object to their involvement in fossil fuel extraction and supply.

90. During the course of the hearing before me, the claimants provided the court with an updated 19-page chronology of protest activity from 1 July to 15 October 2024. As Mr Laurie points out, many of the incidents listed took place in other countries or were not directed at Shell. These included protests or results of courts cases around protests with different targets, including JSO supporters spraying orange pain at departure boards at Heathrow Airport; JSO activists throwing soup at Van Gogh's Sunflowers painting and stopping traffic in Parliament Square; and the occupation of the offices of Policy Exchange by XR activists.

91. The filed chronology documents that no direct action protests have breached Shell's rights. That said, there have been regular peaceful protests outside Shell Tower. These have involved small numbers of protesters usually in silent vigils with banners:

> 3 and 10 July
> Peaceful protest outside Shell Tower – one member of Christian Climate Action.
>
> 17 July
> Similarly at Shell Tower, with two protesters.
>
> Same day in Manchester: Extinction Rebellion activists have protested at the National Cycling Centre in Manchester to call on the former policy adviser for British Cycling, Chris Boardman, to convince British Cycling to drop Shell as its

sponsor of the Paris Olympics. Protesters held signs and placards carried messages like ‘Shell Lie, Cyclists Die’ and ‘[Heart] Chris, Hate Shell’.

24 July
One female protester from Christian Climate Action protested peacefully outside Shell Tower on Belvedere Road. Protester was carrying Placard that reads "I Pray Shell Stops Climate Chaos".

30 July
Twelve XR protesters set up outside Shell Tower. The protesters held up large banners reading "REVEAL THE TRUTH" and "SHELL KILLS". The protesters made speeches and sang a song.

31 July
Three protesters from Christian Climate protested peacefully outside Shell Tower.

1 August
5 protesters peacefully protested outside Shell Tower. They were carrying placards that read " Thousands of Children Killed by Oil Pollution in Niger Delta " "Was It Worth It". They took pictures of Shell Centre on Belvedere Road.

3 August
Climate activists from Shropshire cycle from London to the Paris Olympics to protest against Shell’s sponsorship of British Cycling.

7 and 14 August
Two protesters from Christian Climate protested peacefully outside Shell Tower.

21 August
Two Christian Climate protesters protested peacefully outside Shell Tower.

28 August
One protester from Christian Climate Action peacefully protested outside Shell Tower. Protester was carrying Placard that reads "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying our planet".

5 September
2 protesters from Christian Climate Action set up outside Shell Tower. Protesters were carrying a placard that read 'To Ignore The Climate Science Is Insane' and a banner reading 'We Are Crucifying Our Planet'.

11 September
1 male protester from Christian Climate Action set up outside Shell Tower carrying a placard reading "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying Our Planet".

12 September

2 male protesters from Asthma and Lung UK set up outside Shell Tower with two bicycles with large digital displays on the back stating:
Toxic air stunts lung growth in children.
Air pollution affects our health before we're born.
99% of people in the UK breathe unsafe air.
Toxic air causes up to 43000 premature deaths in the UK every year.

18 September
1 female protester from Christian Climate Action set up outside Shell Tower. A second protester then turned up with a placard reading "To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying our Planet".

25 September
1 male and 1 female protester from Christian Climate Action set up to protest outside Shell Tower. They carried a placard reading "To Ignore Climate Science Is Insane" and a banner reading "We Are Crucifying our Planet".

2 October
2 Protesters from Christian Climate Action set up outside Shell Tower and sat next to planters. They were carrying placards that read “To Ignore The Climate Science Is Insane" & a Banner reading "We Are Crucifying Our Planet".

8 October
Protesters stood outside the Royal Court displaying placards and banners ahead of a key appeal case against Shell.

9 October
2 protesters from Christian Climate Action set up outside Shell Tower. They produced banners and a flag and knelt down to carry out their silent protest.

15 October
Shell's Chief Energy Advisor, Peter Wood, was giving a presentation at the World Energies Summit in London. While walking to the event he was questioned by a member of Fossil Free London who questioned him about Shell in the Niger Delta.

92. Further, there is evidence filed by Shell that senior executives have been “doorstepped” and subject to abusive and threatening messaging on social media.

Ms Ireland and Mr Laurie

Ms Ireland

93. Emma Ireland is currently “job free”, as she puts it, and lives in Bristol. She has a long track record of dedicating herself to others. Ms Ireland filed a skeleton argument and a witness statement dated 17 October 2024 with the court. To provide an overview of her defence, I extract and combine her submissions by combining both documents. She states:

> “I trained as a social worker from 2009-2011. Since 2012 I have worked in mental health, sometimes as a support worker and other times at more senior

levels, as a care co-ordinator. I am currently job free. I have recently been volunteering with food cycle, cooking 3 course community meals with waste food. I have a work contract starting on 1st November working in a mental health setting, with people who have been street homeless for a long time. I care deeply for others and look for ways to support fellow human beings and the earth, be it in my paid work, with family and friends, neighbours, or volunteering. For 3 months of this year I have volunteered on organic farms in the UK.

We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest. We have not yet faced criminal trial for the acts that led to our inclusion on this injunction, so it remains to be seen whether the protest will be judged as lawful. We believe our actions have to date, been entirely within the law as it stood on 24.08.22. Since then the Government has, after much lobbying from Fossil Fuel Companies, passed even stronger laws protecting companies such as Shell. For clarity, I am asking for the Shell Petrol Station injunction to be discontinued.

Events of August 24th 2022
On that day, I attended Cobham Service Station with other supporters of the Just Stop Oil campaign. I walked towards the entrance of the forecourt and sat down on the ground. There were 5 others who sat down too. There was a banner that read Just Stop Oil. The entrance to the forecourt was blocked. Cars continued to leave the petrol station via the exit road. When asked to move I continued to stay seated on the ground. I had my back to the petrol pumps. I am aware that there was damage caused to 2 petrol pump screens by one or two other people.

I sat in the entrance of the Shell Petrol station, as an act of protest, to demand that the government stop issuing new licences for the discovery, development and production of new oil and gas in the UK.

I also took this action to get this message out to Shell and to the public, who were there on the day, and other members of the public and the government via the media. To raise the alarm that we are in a climate emergency and we have to act like it. I put my body on the line and 2 petrol pump screens were decommissioned, to temporarily pause the flow of new petrol into some cars for a limited time. By jolting the status quo, I hoped that this more embodied message, would get through to some more people. Because we all need to be doing more, every day, at all times, to reduce our harmful impact on the climate and to encourage others to do so as well.

I was arrested for causing a public nuisance, and was taken to Staines police station. I pleaded not guilty at the first appearance at Guildford Crown Court. I have been released on unconditional bail for this matter and the trial is currently listed for 11 August 2025 [now at Winchester Crown Court].

My spiritual faith, beliefs and views regarding climate change are set out in my witness statement. These views are sincerely held, reflecting those of many citizens who are concerned about climate change and the role of fossil fuels in perpetuating further man-made global warming.

The health and safety concerns of potential future actions at Shell petrol stations has been discussed in evidence. I too take this point very seriously. I agree that a protest should not be allowed that causes physical harm to staff, customers, passers by and protesters.

I hold the belief that if those that run Shell fully understood the part that they were playing in the climate crisis, in the deepest part of their heart and sole [sic], they would have consented to the damage having been caused the pumps and the disruption to the sale of their fuel.

Since the injunction was made the law relating to protest has changed significantly, offering greater protection to the fossil fuel industry. For instance, s.7 Public Order Act 2023 means that people can be arrested almost immediately after the protest begins and they will face up to a year in prison. I do not understand why there is any need for the injunction to continue to exist in addition to these draconian laws.

Shell requested the interim injunction when these new laws were not yet in force. I propose that the criminal laws of this country are protection enough for Shell to be able to continue to effectively and safely sell petrol to the public. Who can say whether it is the injunction, or the criminal laws, or something else that has meant that there have been no more actions by environmental groups on any petrol station of any brand in England and Wales since August 2022. The evidence since August 2022 given by the claimant talks about other types of actions on other sites in the UK, that are not petrol stations.

[A]nalysis from Carbon Majors Database, has proposed that just 57 oil, gas and cement producers are directly linked to 80% of the world's global fossil fuel CO2 emissions since the 2016 Paris Agreement. Shell has been named as one of these.

We are in a climate emergency. Let us not be a country that continues to use injunctions to create new laws that are overly harsh for environmental defenders and protect big oil companies.

The scientific consensus on the climate emergency could not be clearer. We are in a climate crisis, driven by rising temperatures and extreme weather. An average of over 1.5°C warming would be catastrophic for humanity. The International Panel for Climate Change (IPCC) reports state that we are already overshooting the targets of liveability. We cannot keep burning fossil fuels if we are to have any chance of a liveable future.

I feel that it is my calling to do all I can to reduce the negative impact of climate change at this time. I feel that part of this is to invite others to question what they can do, within their sphere of influence. I understand that for each of us this may be different. In 2022 I became a supporter of Just Stop Oil in order to demand that the government stop issuing licences for the exploration, discovery and development of new oil and gas projects in the UK. For me, this demand felt necessary, clear and reasonable.

> I feel so privileged to be saying this from a place where I have a home, enough food and I am well. The reality for many today, especially in the global south, is that their lives are being ripped apart due to fires, floods, famine caused by climate change. It is us in the global north who have played the biggest part in climate change. I feel it is our responsibility to do all we can as individuals, and to ask those, with different spheres of influence, to do what they can too. This is why I protested on that day, and why I am defending myself at this trial.
>
> Since that day I have been arrested a further five times, each time for participating in protests as a supporter of Just Stop Oil. The demand to the government, on each of these occasions was to stop issuing new oil and gas licences:
>
> - On August 26 2022 I was arrested for blocking the entrance to a petrol station forecourt in London.
> - On 8 October 2022 I was arrested for sitting in a road in London , causing a disruption to traffic. For this I was charged, pleaded not guilty to wilful obstruction of the highway, and later the case was dropped.
> - On 21 October 2022, I was arrested for sitting in a road in London, causing a disruption to traffic. For this I was found guilty of Wilful Obstruction of the Highway. I was sentenced to £200 court costs £26 surcharge and conditional discharge of 12 months.
> - On 10 July 2023, I was arrested for continuing to walk slowly down a road in London, causing traffic to move more slowly. I was arrested for breaching s.12. I was later found guilty for breaching s.12. I was sentenced to £120 court costs and £120 fine. I was also given £120 fine for the above action, due to the conditional discharge.
> - On 10 November 2023 I was arrested for walking slowly down a London road. I was later found guilty of Wilful Obstruction of the Highway and sentenced to £348 costs, £200 fine, £80 surcharge."

Conclusion on Ms Ireland

94. Ms Ireland has devoted her life to supporting and helping others. She sees her environmental activism as being connected to that life's work. She is a person with an acute empathetic sensibility, and as she puts it, "I have always been able to feel the suffering of others". It is commendable that in her career she has sought to assist vulnerable people because of that insight. She is committed to protecting the environment, has never owned a car, and indeed cycled to London for the court hearing all the way from Bristol over several days.

95. The claimant submits that the court should draw an inference against Ms Ireland from her declining to sign an undertaking. The inference is that her refusal makes it more likely that she would take unlawful direct action against Shell again in future should the injunction be discharged. I listened very carefully to Ms Ireland's explanation for wishing to attend the court hearing and not signing the undertaking. It is true, as the claimant submits, that it would be possible for Ms Ireland to sign the undertaking and apply to attend the hearing as an interested party. However, Ms Ireland appears in person. I am not convinced that she has the confidence and legal wherewithal to take this more sophisticated legal course. Further, I am persuaded by the sincerity of her comments to the court that she wished to address it personally to explain the reasons

for her protest activities and felt her ability to do so would be compromised by the undertaking. Therefore, I decline to make an inference against her. I turn to the other matters.

96. Two days after her protest in Cobham 24 August 2022, Ms Ireland was arrested on the forecourt of another petrol station, this time in the Acton area of west London. In October of that year, she was arrested for disrupting the traffic in London, although no further action was ultimately taken. Later in October 2022, she disrupted the traffic and was found guilty of Wilful Obstruction of the Highway. In July 2023, she again disrupted the traffic and was again found guilty. In November 2023, she again disrupted the London traffic. She was again found guilty of Wilful Obstruction of the Highway. Therefore, Ms Ireland's commitment to environmental activism has continued following the Cobham protest. She has been convicted of criminal offences for it and that has not dampened her moral commitment.

97. That said, she submits to the court that "the criminal law might well be enough of a factor to deter future protests [rendering] an injunction unnecessary", pointing to the coming into force of the Public Order Act 2023. She supports this point with the fact that "there have been no further protests at petrol stations since August 2022".

98. I have no doubt whatsoever that Ms Ireland is a selfless and committed person. She feels the suffering of others acutely. That extends beyond those in her immediate circle whom she has helped and includes people who are partially sighted or without sight, and people living with mental health problems and trauma. That act of imaginative empathy extends to the many millions of people in the Global South who she says are suffering because of climate change. It also extends, as she powerfully put it, to "the suffering of the Earth". She does not think that Shell has changed since her action at Cobham in August 2022, except that it has resiled from its "green and sustainable commitments". Ms Ireland stated that 57 producers are responsible for 80 per cent of global fossil fuel carbon dioxide emissions. Shell is one of them. Lives in the Global South are being "ripped apart" by this climate emergency. This is why she feels the obligation to protest and "do all we can".

99. While she is committed to relieving the suffering of others "from a peaceful place", the court is left in little doubt that should the injunctions be discharged, such is the passion and strength of Ms Ireland's commitment to trying to effect change, there is a real and imminent risk of her engaging in direct action protests and breaching the claimant's rights and there is a strong probability that it would constitute a tort committed against Shell. I am not persuaded that the coming into force of the Public Order Act 2023 with the 12-month maximum sentence would be effective to deter Ms Ireland. It is unlikely that Ms Ireland would act alone, because as she told the court in terms, she is "still a supporter of JSO" and has circulated information to protest groups. The overwhelming probability is that her future direct action would again be joint and coordinated tortious action. This is because since her arrest at Cobham in August 2022, and despite it, she has risked arrest and repeated arrest and that has not deterred her from continuing to intervene.

100. Ms Ireland told the court that "to do nothing is not within my nature". Therefore, I find that as against Ms Ireland the claimant has produced sufficient evidence to prove its claim on both limbs identified in *Wolverhampton*.

Mr Laurie

101. Charles Phillip Laurie lives in Faversham, Kent. Mr Laurie is a retired civil engineer and Quaker, whose faith is immensely important to him and closely connected to his activism. He filed a skeleton argument and a witness statement with the court dated 16 October 2024. Once more, extracts from both are melded to provide an overview of Mr Laurie's defence. He states:

> "We do not agree that this injunction is necessary. We believe that Shell should not be protected from lawful protest.
>
> On 24th August 2022 – Cobham Service Station – I was arrested for public nuisance and possession of articles with the intent to cause or damage property. On that day, I attended Cobham Service Station with other protesters from JSO group. Initially my plan was to cause damage to the petrol pumps of the service station with two other protesters, whilst five other protesters blocked the entrance to the station forecourt and glued themselves to the ground.
>
> Whilst I was walking towards the petrol pumps, I changed my mind about causing damage to the petrol pumps and I changed course to join the other protesters at the entrance to the forecourt. I sat down with them and glued myself to the ground. I was arrested.
>
> The interim injunction and its extension are "immensely troubling for me because it curtails my right to peacefully protest outside petrochemical facilities, offices and retail facilities are which are owned and operated by Shell.
>
> On 26 August 2022, Shell's Petrol Stations at Acton Park and Acton Vale were subjected to action by protesters that went well beyond peaceful protest. As part of what Just Stop Oil described as a week-long "series of actions disrupting oil terminals and petrol stations in support of [Just Stop Oil's] demand that the UK government end new oil and gas projects in the UK", individuals once again blocked the entrance to the petrol station and caused damage to 10 fuel pumps in total across the two Shell Petrol Stations.
>
> I would ask that you consider if the cost is actually a big or small number. I am sure that the numbers are big for those Shell trading businesses actually impacted but at the highest level in terms of a business making 19.5 billion dollars profit in the past year, it is very, very small. Whether you want to regard it as being large or small is down to you. For me it is very small, and fits exactly for the requirement protest to be proportional.
>
> All protests that gave rise to this injunction where at locations directly connected with the harm being caused by the ongoing operations of Shell.
>
> There is no evidence that I will act in breach of the Claimant's rights in the future such that "imminent and real risk of harm test" for an anticipatory injunction is met.

> Another way to look at this might be that this injunction shields Shell from the consequences of public discontent at the decisions made at senior levels within the company.
>
> I am a Quaker. I integrate my faith in everything I do in my life but particularly through my activism. Quakerism calls for Quakers to live by our values and actively participate in the upholding of these values where we see it is necessary. Activism is the practical side of my faith. It is interconnected. Quakerism is not about heaven or an afterlife, it is about the world we are in now. That's why so many Quakers are involved in activism about climate change.
>
> Human induced climate change is real. It is happening now. My Environmental Science degree tells me that there is cause and effect in the laws of physics. If you increase CO2 in the atmosphere the temperature has to increase.
>
> The products sold by fossil fuel companies such as Shell are one of the major causes of climate change. These companies know the risks their products pose. Their role is totally malign. They deny the impact, delay action, destroy lives and environments. They take no responsibility for the output of their products, at all times seeking to maximise their sales which is a death sentence to many people and the planet.
>
> In general, business is unable to see past profit. Generally, if they think taking action to reduce their impact on climate change will undermine their profits they prefer to continue with business as usual and where necessary green wash past any issues.
>
> This is why it is important to me to protest; my faith requires me to take action to alert people to the dangers of climate change and put pressure on the Government and fossil fuel companies to change their ways, while the Government and big business are failing to do so."

Conclusion on Mr Laurie

102. For similar reasons to Ms Ireland's case, I refuse to draw an adverse inference against Mr Laurie that the claimant invites me to make. I judge that it is neither safe nor reasonable.

103. Mr Laurie engages in environmental activism and protest animated by his religious, spiritual and moral beliefs. His Quakerism compels him to take action against what he perceives to be a vast societal and global wrong, the climate emergency. He is entitled to hold these views. Some will agree with him; others will not. His right to hold that belief must be respected and protected by the law. The issue in this case is how he seeks to intervene in the public sphere in furtherance of that belief. His sincerely held Quaker views, and the moral imperative to take action that arises because of them, have not changed. He continues to believe that Shell and fossil fuel companies like it are "one of the major causes of climate change". He maintains that the role of Shell is "totally malign". Shell and others "destroy lives and environments". He regards the impact of the protests on Shell to be "small" and "proportional", given the vast resources at its disposal. I judge that the strength of Mr Laurie's sincerely held religious and moral beliefs significantly outweigh any further deterrent effect that the operation of the

Public Order Act 2023 might have. He has been willing to risk arrest previously. He had gone to the Cobham petrol station in August 2022 with the intention of causing criminal damage himself, such is the force of his conviction. He was one of the protesters arrested outside Inner London Crown Court for holding placards, although it must be emphasised that the case against him for that protest was discontinued. The fact that at Cobham he did not damage any petrol pump is no real answer as the presence and deployment of the police caused him to alter his approach. Further, I found his comments about the risk that smashing petrol pumps may cause indicative of his belief, grounded in his scientific background and training, that such direct action is not as risk—laden as Shell's evidence maintains. That increases the risk that he would engage in future similar direct action. It is noteworthy that despite the presence of the police at Cobham, he was still prepared to protest and be arrested in the furtherance of his cause and moral concerns.

104. He spoke passionately and emotionally when addressing the court. He stated:

> "Shell have abandoned all the promises that they were going to be become the greenest energy company in the world. Shell say they are going to drill a new gas field in the North Sea, so 'how is that green ambition going?'."

105. He continued, "I cannot make a promise that I will not protest again, but cannot say I will." If the injunctions are discharged, he says he may resume the protests against Shell but tells the court he is unable to say he will or not. He provided a different analysis of the changes in the law and increased sentencing under section 7 of the Public Order Act 2023. He emphasises that:

> "Maximum sentences are artificial as rarely used. Instead, the real change is the new police powers. The police only have to determine the action is 'more than minor' disruption [through obstruction] and they do that really quickly. The change enables the police to break up the protests more quickly and it is not the sentences that 'protects Shell'."

106. On Mr Laurie's analysis, then, the increased sentencing powers are not the material difference in deterring protests: it is rather the police's ability to break up protests far earlier. He concluded his submissions by telling the court:

> "This is a very serious issue. But Shell is putting this CO2 into the atmosphere causing thousands and millions of deaths, even hundreds of millions of deaths, not in the future, but in the next few years, probably in my lifetime and certainly the lifetime of my children. It is so serious we must look in the mirror and take action."

107. It seems to me that the real and imminent risk remains that without a final and continuing injunction, Mr Laurie would in pursuit of his sincere beliefs take unlawful direct action again against Shell and there is a strong probability that this would result in a breach of Shell's rights under the civil law. Therefore, I find that as against Mr Laurie the claimant has produced sufficient evidence to prove its claim on both limbs of *Wolverhampton*.

Other named defendants

108. As to the risk or threat attaching to the other named defendants, I draw an adverse inference from their failure to sign the undertakings, enter a defence, attend the final hearing or otherwise engage in these proceedings. I note the observations of Linden J in *Esso Petroleum* at para 45:

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

PUs

109. In respect of PUs, I cannot draw an inference regarding undertakings.

110. However, in respect of the other named defendants and PUs, I find that the claimants have provided sufficient evidence to prove the claim and meet the two limbs of the *Wolverhampton* approach. The argument that direct action against Shell since the granting of the injunctions has significantly diminished must be seen in light of the observation of Cotter J at para 19 that injunctions are granted on the assumption that they will be obeyed and thus have a material effect. Indeed, the likely effectiveness of an injunction must be one of the factors in the section 37 discretionary assessment of whether to grant it at all. There have been, as set out in the claimant's chronology, repeated unlawful acts directed at airports and universities.

111. It is significant that the series of recent protest injunction cases touching on various elements of the energy and fossil fuel sector, this court has found a continuing real and imminent risk of direct action resulting in tortious breach of the claimants' rights. While it would be naïve to ignore that context of diverse and disparate targeting of the fossil fuel sector, I emphasise that I judge this case on the evidence before me. I note what Ritchie J said in *Valero* at para 64:

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

112. Finally on this point, Hill J noted at para 36:

> "The claimants liaise regularly with the police, whose intelligence indicates that there continues to be an ongoing threat; that the protest campaign is not over; and that protest groups will continue to attempt to put pressure on the Government to halt new investment in fossil fuels. It is apparent that JSO continues to have the ability to draw on a large group of protesters who are willing to be arrested; that they take action using a variety of tactics and target locations across the UK; and that they employ tactics that attract the media and public interest. Further, there is a high level of crossover between the individual protest groups, who appear to share disruptive tactics between them. His view was that activities of the sort described above would be likely to increase as a result of the Government's recent approval of the building of a new power station, the cost-of-living crisis and the

likely increase in support for JSO given that environmental concerns affect the majority of the public."

113. Stepping back and assessing the totality of the evidence before me, I find that should the injunctions be discharged, a real and imminent risk arises of direct action tortious interference with the claimants' rights by the named defendants and PUs.

4 Defences

5 Balance of convenience/compelling need

6 Proportionate interference with ECHR rights

114. Only two defences have been filed, those of Ms Ireland and Mr Laurie. They share a common approach. The main lines of their defence can be reduced to three key features:

(1) An injunction amounts to an unlawful, that is unnecessary and disproportionate, interference with their Article 9, 10 and 11 Convention rights;

(2) The disruption caused and Shell's loss is "proportional" to the acts committed by Shell in pursuit of its business interests;

(3) The Aarhus Convention protects "environmental defenders" from the "excessive" use of law.

115. Since the analysis of these points engages questions of balance of convenience and compelling need and proportionality, I consider Factors 5 (balance of convenience) and 6 (proportionality) within this section. I examine the defences of Ms Ireland and Mr Laurie first, before considering the position of PUs.

Convention rights and proportionality

116. Article 9 of the ECHR provides:

> "Article 9 – Freedom of thought, conscience and religion
>
> 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

117. I cannot see that the granting of anticipatory injunctions interferes with the defendants' freedom of thought or conscience or indeed religion. They can adhere and continue to believe what they wish. Equally, I am not persuaded that the injunctions interfere with

the right of defendants to "manifest" their beliefs. However, and in any event, any interference is subject to the proportionality analysis in respect of other Convention rights that follows and what is crucial to appreciate is that Article 9 is a qualified right and explicitly limited to matters "prescribed by law" which are necessary "in a democratic society". It is protection not just of public order and health (which must include bodily safety and integrity), but the protection of the rights and freedoms of others, which are capable of including rights under the civil law, such as those claimed by Shell.

118. I turn to Articles 10 and 11, the rights to freedom of expression and freedom of peaceful assembly and association with others.

> "**Article 10 of the Convention**
>
> **Freedom of expression**
>
> Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.
>
> **Article 11 of the Convention**
>
> **Freedom of assembly and association**
>
> Everyone has the right to freedom of peaceful assembly and to freedom of association with others …"

119. The argument advanced by the defendants is a repeat of the argument that was fully developed by Mr Simblet KC before Hill J. Nevertheless, I reconsider it here. Both rights are once more qualified rights. Art 10 is qualified in this way:

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

120. The qualification to Article 11 is in these terms:

> "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

121. The first point is that in respect of interferences with or entry onto the private property belonging to Shell, ECHR rights do not confer a right to enter onto private land (*DPP*

v Cuciurean [2022] EWHC 736 (Admin), para 45 and paras 76-77; *Ineos* at para 36, per Longmore LJ). Johnson J at paras 55-56 identified the four-part approach to issues of rights violation and proportionality taken by the Supreme Court in *Ziegler*:

> "55. The injunction interferes with the defendants' rights to assemble and express their opposition to the fossil fuel industry.
>
> 56. Unless such interference can be justified, it is incompatible with the defendants' rights under articles 10 and 11 ECHR and may not therefore be granted (see sections 1 and 6 of the Human Rights Act 1998). Articles 10 and 11 ECHR are not absolute rights. Interferences with those rights can be justified where they are necessary and proportionate to the need to protect the claimant's rights: articles 10(2) and 11(2) ECHR. Proportionality is assessed by considering if (i) the aim is sufficiently important to justify interference with a fundamental right, (ii) there is a rational connection between the means chosen and the aim in view, (iii) there is no less intrusive measure which could achieve that aim, and (iv) a fair balance has been struck between the rights of the defendants and the general interest of the community, including the rights of others: *DPP v Ziegler* [2021] UKSC 23 [2022] AC 408 *per* Lord Sales JSC at [125]."

122. Of course, this is a familiar rubric and echoes the widely cited four-part proportionality test set down by Lord Reed in *Bank Mellat* v *HM Treasury No. 2* [2013] UKSC 39 at para 74:

> "It is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

123. I consider in turn each of the four *Ziegler* elements.

Ziegler (i): legitimate aim

124. The legitimate aim of the proposed final injunction is the protection of the claimants' right to carry on their business, which, despite falling under severe criticism as it does from the defendants, remains under the law a lawful business. I have received no argument identifying the illegality of Shell's core business under the law of England and Wales. The defendants argue that Shell contributes to the climate emergency, but that is distinct from identifying a clear basis in law that the sale of fuel from service stations in the United Kingdom, as but one example, is unlawful. On that point, I received no argument. It was, of course, open to the defendants or any of them to argue that there is no legitimate aim worthy of protection as the core business of fuel sale is illegal. That was not an argument advanced.

125. Instead, the focus was on the balance between the risk to global environmental factors created, it is said, by Shell and the far less intrusive infringements of Shell's rights by the protests. That is essentially an evaluative (balance) argument and not one about

legitimate aim. However, Johnson J while touching on this point, focused on aim and *Ziegler* (i) at para 57:

> "The defendants might say that there is an overwhelming global scientific consensus that the business in which the claimant is engaged is contributing to the climate crisis and is thereby putting the world at risk, and that the claimant's interests pale into insignificance by comparison. This is not, however, "a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important" – *City of London v Samede* [2012] EWCA Civ 160 [2012] 2 All ER 1039 *per* Lord Neuberger at [41]. It is not for the court, on this application, to adjudicate on the important underlying political and policy issues raised by these protests. It is for Parliament to determine whether legal restrictions should be imposed on the trade in fossil fuels. That is why the defendants' actions are directed at securing a change in Government policy. The claimant is entitled to ask the court to uphold and enforce its legal rights, including its right to engage in a lawful business without tortious interference. Those rights are prescribed by law and their enforcement is necessary in a democratic society. The aim of the injunction is therefore sufficiently important to justify interferences with the defendants' rights of assembly and expression: cf. *Ineos Upstream v Persons Unknown* [2017] EWHC 2945 *per* Morgan J at [105] and *Cuadrilla per* Leggatt LJ at [45] and [50]."

126. I find that the objectives of the injunctions do constitute a legitimate aim.

Ziegler (ii): rational connection

127. As to rational connection, it is important to be clear what this means. I take it to mean that not only is there a clear and logical connection between the measure and the objective or legitimate aim sought and that the measure can be seen to be an effective means to further the aim – to achieve it. In this case, I judge that the injunctions sought clearly have the capacity to deter and protect the claimants' rights. Indeed, it is likely that they have materially contributed to achieving that aim since their granting on an interim basis. I find that that is a reasonable inference from the significant falling away of direct action breaches of Shell's civil law rights.

Ziegler (iii): least intrusive measure

128. It is essential that the measure is the least intrusive action consistent with achieving the legitimate aim. Both Johnson J and Hill J (and indeed Cotter J in the April 2024 review) so found. Indicative of the level of intrusion is that the injunctions as drafted, as before, in terms only prohibit future acts of unlawful protest. For similar reasons, the court finds that the injunctions are the least intrusive measure, being directed exclusively at unlawful rights breaches.

Ziegler (iv): fair balance

129. As to the fourth element, Hill J considered the question of balance between the competing rights and concluded at paras 179-80:

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

130. Hill J's conclusion was adopted by Cotter J at para 59, when he held:

> "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."

131. To the extent that it is necessary to consider proportionality separately, and invoke the four-part *Bank Mellat* test enunciated by Lord Reed, I reach the same conclusions as in the *Ziegler* analysis. As Ms Stacey put it with accuracy, in fact the point "overlaps". However, before reaching my decision on "fair balance" and the infringement of the defendants' rights, I must address the question of the Aarhus Convention. The court considers whether (1) it is relevant to the exercise of its discretion in granting an injunction; (2) if so, in what way and to what extent, whether as part of the *Ziegler* analysis or as a freestanding point.

132. Before I consider the Aarhus Convention, I reflect on the argument that was put before Cotter J that the creation of additional criminal offences relating to protesting and increased police powers represent a material change of circumstances since the granting of the injunctions in 2022 and 2023. Cotter J held from para 22:

> "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.
>
> 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."

133. Part of the Aarhus argument that I must turn to, and as noted at the start of the judgment as reported by the Special Rapporteur, is that the simultaneous use of criminal and civil proceedings is oppressive and "excessive" use of the law. I make three initial observations about this.

134. **First**, that I agree with Cotter J that the change in criminal law is potentially relevant as a material change in circumstances.

135. **Second**, however, what is essential is to assess the evidence about what the significance of that change is or is likely to be. As to the deterrent effect of increased criminal sanction and powers, the submission is advanced without any or any solid evidence. It is just as possible that the reduction in direct action unlawful protests targeting Shell is a result of the interim injunctions granted. It seems to me speculative to assign the change in pattern of protest to the coming into force of the Public Order Act 2023. Indeed, Mr Eilering notes in his statement at para 8.5.2 in relation to protests that postdate the coming into force of the new statute that:

> "both the Fourth and Tenth Defendant in the Shell Petrol Station Proceedings were recently arrested under the Public Order Act. Pages 304-306 of Exhibit PE1. I am also aware that the Fifteenth Defendant was arrested after spraying a University of Leeds building with orange paint."

136. The ongoing nature of protests was noted by Ritchie J in *Valero*, where he reviewed the evidence filed on behalf of the claimant up to December 2023, and thus after the enactment of the new Public Order Act on 3 May 2023. He summarised the evidence of Ms Pinkerton in this way at para 41:

> "41. Miss Pinkerton extracted some quotes from the Just Stop Oil press releases including assertions that their campaign would be "*indefinite*" until the Government agreed to stop new fossil fuel projects in the UK and mentioning their supporters storming the pitch at Twickenham during the Gallagher Premiership Rugby final. Further press releases in June and July 2023 encouraging civil resistance against oil, gas and coal were published. In an open letter to the police unions dated 13th September 2023 Just Stop Oil stated they would be back on the streets from October the 29th for a resumption after their 13 week campaign between April and July 2023 which they asserted had already cost the Metropolitan Police more than £7.7 million and required the equivalent of an extra 23,500 officer shifts."

137. **Third**, and vitally, the argument confuses the focus of the criminal law and civil injunctive relief. It is certainly the case that one of the stated objectives of criminal sentencing is to deter as well as punish. As the Sentencing Act 2020 provides:

> "57 Purposes of sentencing: adults
>
> (1) This section applies where—
>
> (a) a court is dealing with an offender for an offence, and
>
> (b) the offender is aged 18 or over when convicted.
>
> (2) The court must have regard to the following purposes of sentencing—
>
> (a) the punishment of offenders,
>
> (b) the reduction of crime (**including its reduction by deterrence**),
>
> (c) the reform and rehabilitation of offenders,
>
> (d) the protection of the public, and

> (e) the making of reparation by offenders to persons affected by their offences."
>
> (emphasis provided)

138. Thus deterrence is both a recognised and legitimate aim of criminal sanction and one shared by jurisdictions across the world. However, in any specific case one must carefully assess whether the evidence supports that the particular enactment has in fact attained the powerful (here additional) deterrent effect claimed. Indeed, Mr Laurie in oral submissions argued that the real impact of the Public Order Act 2023 was not the increased sentencing powers, empowering the court to impose sentences of imprisonment up to 12 months (section 7(3)(b)). Instead, he argues that it is the ability of the police to intervene earlier and when the levels of disruption through protest were lower. This is all a matter of debate and speculation. It is not a reliable or safe basis to make important discretionary judgments.

139. Another of the chief aims of criminal sentencing is to punish offenders, as the Sentencing Act 2020 made clear. That is looking, as Mr Semakula put it succinctly, at the past. By contrast, injunctive relief is looking towards the future and seeking to prevent future harm. This point was considered by Hill J at para 178:

> "178. On the other hand, as Johnson J observed at para 60, simply leaving it to the police to enforce the criminal law would not adequately protect the rights of the claimant in the petrol stations claim: such enforcement could only take place after the event, meaning inevitable loss to the claimant; and some of the activities that the injunction sought to restrain are not breaches of the criminal law and could not be enforced by the exercise of conventional policing functions. The same is true of the claimants' rights at the Haven and Tower sites. Indeed the balance is even clearer in those respects given that the sites involve the claimants' private property, as to which see *Cuciurean*, paras 45–46, 76 and the conclusion at para 77, that articles 10 and 11 "do not bestow any 'freedom of forum' to justify trespass on private land or publicly owned land which is not accessible by the public".

140. Therefore, while I do accept that the enactment of the Public Order Act 2023 is a material change, it remains evidentially unclear what material impact it has on deterring future protest and to what extent it operates on the minds of those who would protest against Shell. Further, given that criminal and civil proceedings are directed at distinctly different objectives, the argument that the parallel proceedings are a form of, as Mr Laurie put it, "double punishment", is misplaced. An anticipatory injunction is granted not to punish, but to prevent identifiable future harm. As the Supreme Court put it in *Wolverhampton* at para 141, an injunction is not granted "as stage one in a process intended to lead to committal for contempt" (per Lord Reed). Punishment may result if there is contemptuous breach; punishment is not the objective of the injunction, preventing future harm is.

141. I break off the systematic analysis of the 15 factors to examine the substance of the Aarhus argument.

§X. AARHUS CONVENTION ANALYSIS

142. There is a significant amount of analysis to undertake, so I divide it into four subsections and flag them as follows:

(1) Short history and context;

(2) Status of Special Rapporteur;

(3) Status of the Aarhus Convention;

(4) Discussion.

143. The significance of the Aarhus Convention (here "Aarhus" or "the Convention") for this case is that both appearing defendants rely on it in their defence. Their common position is that Aarhus "protects environmental defenders from excessive use of the law" and the grant of final injunctions against them would "breach Aarhus" and particularly Article 3(8).

144. The claimants submit that Aarhus is an unincorporated convention and thus is "not justiciable" in these courts. Only certain narrow, highly specific - and for these purposes irrelevant – exceptions have been incorporated into domestic law. These are irrelevant provisions about costs in judicial statutory review by dint of the Civil Procedure Rules 1998 Part 46.24-28 (indeed, two of the historic referrals of the UK to the Convention's Compliance Committee have concerned the high costs of legal challenge in environment matters: *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2008/27 Concerning Compliance by the United Kingdom of Great Britain and Northern Ireland' UN Doc ECE/MP.PP/C.1/2010/6/Add.2* (24 September 2010) (ACCC/C/2008/27 UK); *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2008/23 Concerning Compliance by the United Kingdom of Great Britain and Northern Ireland' UN Doc ECE/MP.PP/C.1/2010/6/Add.1* (24 September 2010)). Thus, Mr Semakula, who very ably took the Aarhus issue on behalf of the claimants, submitted that "none of the circumstances for Aarhus to be taken into account apply here". It should not factor in the court's discretionary decision. However, even if it should be considered, there would be no breach of Aarhus by granting the proportionate injunctions sought by Shell.

(1) Short history and context

145. On 25 June 1998, the Aarhus Convention was adopted at the Fourth "Environment for Europe" Ministerial Conference in Aarhus, Denmark. The United Kingdom signed the treaty and had been involved in its evolution and formulation. A series of meetings of the signatories took place, before in May 2005 the United Kingdom ratified Aarhus. Aarhus enshrines Principle 10 of the 1992 Rio Declaration on Environment and Development:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in

> their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

146. To achieve these objectives, the Convention is grounded in three foundational "pillars":

(1) Access to information (Articles 4-5)
(2) Public participation (Articles 6-8)
(3) Access to justice (Article 9)

147. The UNECE guide to the Convention states that the instrument is "unique" because it "explicitly links environmental rights with human rights" (while this connection is not made explicit in the text of the Convention, it has been frequently recognised by the Convention's institutional bodies: see the rapid response mechanism decision, post at para 151). In making such connection, the UNECE emphasises the Convention's confirmation that "you have a right to information about, to have a say in, and if necessary, seek justice regarding important decisions that affect you and your environment." The "three pillars" act to provide a "mutually reinforcing mechanism to hold Governments to decision-makers accountable." Further:

> "progressive Governments increasingly recognize and understand that environmental decisions will only be sustainable if reached through transparent, participatory and accountable process. The Aarhus Convention provides Governments with standards to ensure that this happens."
>
> And the Convention:
>
> "makes clear that we have an obligation to protect and improve the environment for the benefit of present and future generations."

148. The UNECE document emphasises that the Convention is "a living treaty" to be interpreted in "a dynamic way". A further aspect of the history of the Convention is provided by Lord Leggatt in *Finch* at paras 19-21:

> "19. The Aarhus Convention was itself partly based on Council Directive 85/337/EEC of 27 June 1985, which introduced the EIA procedure within the European Economic Community (as it was then called). That Directive was amended after the Aarhus Convention came into force by Directive 2003/35/EC to implement obligations arising under the Aarhus Convention and was later codified in the EIA Directive. Recital (18) to the EIA Directive refers to the Aarhus Convention and recital (19) records that:
>
> > 'Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and wellbeing.'
>
> 20. Obligations arising under the Aarhus Convention have been built into articles 6, 8 and 9 of the EIA Directive. Thus, article 6 imposes obligations on member states to inform the public early in the decision-making procedure of various

matters, which include details of the arrangements made for public participation in the process; to make available to the public concerned the information gathered where an EIA is required; and to give the public concerned early and effective opportunities to express comments and opinions before the decision on the request for development consent is taken. The "public concerned" is defined in article 1(2)(e) as "the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures" required by the EIA Directive and specifically includes NGOs promoting environmental protection. Article 8 of the EIA Directive requires the results of such public consultation to be "duly taken into account" in the decision-making procedure; and article 9(1) provides that the public must be promptly informed of the decision taken and of "the main reasons and considerations on which the decision is based, including information about the public participation process".

21. The rationale underpinning these public participation requirements is expressed in recital (16) to the EIA Directive:

> "Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken."

Two important ideas are included within this rationale. First, public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, the public participation requirements serve an important educational function, contributing to public awareness of environmental issues. Guaranteeing rights of public participation in decision- making and promoting education of the public in environmental matters does not guarantee that greater priority will be given to protecting the environment. But the assumption is that it is likely to have that result, or at least that it is a prerequisite. You can only care about what you know about."

149. This authoritative exposition by the Supreme Court identifies the focus of the Convention, and highlights how parts of it have been incorporated. The corollary of that is that large parts of the text of the Convention have quite deliberately not been incorporated into domestic law by the United Kingdom. I now deal with the most relevant parts of the Convention for this case, citing Article 3(8) in full.

> "Article 1
> OBJECTIVE
> In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.
>
> Article 3

> 4. Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.
>
> 8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings. "

150. There has been growing international recognition of the importance of environmental human rights defenders and concern about the obstacles and threats they have faced (see UN General Assembly, Resolution adopted by the Human Rights Council on 21 Mary 2019, "Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development"; among numerous UNECE records voicing such concerns, see "Information note on the situation regarding environmental defenders in Parties to the Aarhus Convention from 2017 to date", 24th meeting of Working Group of the Parties, Geneva, 1-3 July 2020).

151. Thereafter, there was a proposal for the creation of a "rapid response mechanism" for the protection of environmental defenders, resulting in a new mandate. The Meeting of Parties to the Aarhus Convention seventh session in Geneva on 21 October 2021 adopted the rapid response proposal. At its third extraordinary session (Geneva, 23-24 June 2022), the Meeting of the Parties by consensus elected Mr. Michel Forst as Special Rapporteur on Environmental Defenders under the Aarhus Convention (decision VII/9 of the Meeting of the Parties ("the Decision")). The Special Rapporteur's role is to take measures to protect any person experiencing or at imminent threat of penalization, persecution, or harassment for seeking to exercise their rights under the Aarhus Convention. The terms of reference make plain how the mandate is closely linked to Article 3(8). This is the first international mechanism specifically safeguarding environmental defenders to be established within a legally binding framework either under the United Nations system or other intergovernmental structure.

152. The Decision recognised in terms:

> "the critical importance of establishing and maintaining a safe environment that enables members of the public to exercise their rights in conformity with the Convention" and to ensure "due protection of environmental defenders."

153. The Decision expressed "alarm" at:

> "the serious situation faced by environmental defenders, including, but not limited to, threats, violence, intimidation, surveillance, detention and even killings, as reported by States Members of the United Nations, and by intergovernmental and non-governmental organizations and other stakeholders"

154. The Decision clarified the definition of environmental defenders which are:

> "any person exercising his or her rights in conformity with the provisions of the Convention"

and the decision acknowledged:

> "that the safety of environmental defenders is critical in achieving the entire 2030 Agenda for Sustainable Development, and in particular its Sustainable Development Goal 16."

155. Therefore, the mandate of the Special Rapporteur is to monitor the treatment of environmental defenders and, where necessary, raise the issue with the relevant national government through a "letter of allegation". Should the response not satisfy the Special Rapporteur, the matter can be referred on to the Convention's Compliance Committee, which has a mandate operating in parallel to the Rapporteur's. The Compliance Committee oversees the compliance of member states with their obligations under the Convention.

(2) Status of the Special Rapporteur

156. Shell submits that Michel Forst's statement is simply "an opinion" and "has little or no status in a domestic law claim". While what he says is an opinion, this to my mind cannot reduce his detailed observations and concerns to insignificance. While it is true that what Mr Forst says is not the determination of a court of law, it is the assessment of the official with a mandate granted by the United Nations to monitor and safeguard the rights of those who express concern about pressing environmental issues that have the potential to affect us all. Out of respect to Mr Forst and indeed the United Nations, I have carefully read and considered what Mr Forst has said in his mission statement.

(3) Status of the Convention

157. While the United Kingdom has withdrawn from the European Union, Brexit did not alter the United Kingdom's ratification of Aarhus, and the UK remains a signatory and party. The question here is the Convention's enduring status in domestic law. My focus is on the unincorporated parts of the treaty. There can be no argument but that due to their being unincorporated they cannot be directly applied in domestic law. But that is not an end to it. The question of the legal relevance of international treaties that are not incorporated was considered by the Supreme Court in *R (SG) v Secretary of State for Work and Pensions* [2015] 1 WLR 1449 (SC) ("*SG*"). Put shortly, in considering Convention rights under the ECHR, regard may be had to international law conventions. Lord Reed said:

> "82 As an unincorporated international treaty, the UNCRC [United Nations Convention on the Rights of the Child] is not part of the law of the United Kingdom (nor, it is scarcely necessary to add, are the comments on it of the United Nations Committee on the Rights of the Child). The spirit, if not the precise language of article 3.1 has been translated into our law in particular contexts through section 11(2) of the Children Act 2004 and section 55 of the Borders, Citizenship and Immigration Act 2009: *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, para 23. The present case is not however concerned with such a context.
>
> 83 The UNCRC has also been taken into account by the European Court of Human Rights in the interpretation of the Convention, in accordance with article

31 of the Vienna Convention on the Law of Treaties. As the Grand Chamber stated in *Demir v Turkey* (2008) 48 EHRR 1272 ["*Demir*"], para 69,

> "the precise obligations that the substantive obligations of the Convention impose on contracting states may be interpreted, first, in the light of relevant international treaties that are applicable in the particular sphere". It is not in dispute that the Convention rights protected in our domestic law by the Human Rights Act can also be interpreted in the light of international treaties, such as the UNCRC, that are applicable in the particular sphere."

(4) Discussion on Aarhus

158. Relevance or applicability cannot amount to surreptitious incorporation. What cannot happen is for the common law to be used to incorporate otherwise unincorporated international conventions "through the back door" (*A v Secretary of State for the Home Department* (No 2) [2005] 1 WLR 414 (CA)). That is because the court cannot do what Parliament declined to do: give direct effect to an international treaty that remains, in its relevant provisions for these purposes, unincorporated.

159. Upon enquiry by the court, the parties agree that Aarhus does not explicitly mention "excessive use of the law". That phrase is the defendants' characterisation of the essential thrust of the Convention read as a whole. In particular, they rely on Article 3(8) and the obligations of signatory parties to protect environmental defenders from penalisation, persecution and harassment.

160. The United Kingdom has not incorporated Article 3(8). However, in line with *SG* (Supreme Court), *Demir* (Grand Chamber) and the Vienna Convention on the Law of Treaties, I find that the Aarhus Convention:

> (1) Is a relevant treaty in the sphere of environmental rights and protest about environmental issues;
>
> (2) Is relevant to the interpretation of substantive rights under the ECHR, and particularly the rights under ECHR Articles 9, 10 and 11.

161. While it is submitted by the claimants that the court's focus should strictly remain on the ECHR as it is incorporated into domestic law by the Human Rights Act 1998, that misses the point of the Supreme Court's observations about relevance of unincorporated international treaties. While the United Kingdom has not incorporated Article 3(8), nor has it disowned it. This country continues to be a signatory to Aarhus. Thus, it must be taken to respect its terms and all of them save for any reservations. There is no reservation that has been brought to my attention in respect of Article 3(8). There is, of course, an understandable and material overlap between Articles 10 and 11 of the ECHR and Article 3(8) of Aarhus. The rights enjoyed under the ECHR are meaningless if states decline to protect them. What Article 3(8) of the Aarhus Convention achieves in the protection of the rights of protesters is to provide a poignant focus on the importance of ensuring that environmental defenders are not penalised, persecuted or harassed for exercising right in conformity with the Aarhus Convention. To repeat: the three pillars of Aarhus are (1) access to information (Articles 4-5); (2) public participation (Articles 6-8); and (3) access to justice (Article 9) in relation to decision-making around environmental matters. It can be said that protest is part and parcel of

public participation in a wider understanding of decision-making that "may have a significant effect on the environment", to borrow from Article 6(1)(b). Article 6(1)(a) provides:

> "Article 6
>
> PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES 1.
>
> Each Party: (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I"

162. Annex I then provides a list of relevant activities:

> "Annex I LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6, PARAGRAPH 1 (a) 1. 2. Energy sector:- Mineral oil and gas refineries; Installations for gasification and liquefaction"

163. Stepping back to consider all this, people who protest about and wish to draw attention to the fossil fuel industry (Annex I) seem to me to be capable of falling within the "public participation" provisions of Article 6, which in turn is connected to the Article 3(8) protections. It should also be remembered that Article 3(3) provides:

> "3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters."

164. While there is a focus on participation in decision-making, I recognise that the concept of environmental defender is capable of extending to those engaging in protests about environmental projects (see the communication of the Compliance Committee against Belarus about protests against a new nuclear plant: *ACCC 'Findings and Recommendations with Regard to Communication ACCC/C/2014/102 Concerning Compliance by Belarus'*).

165. I accept that the terms of the Convention do not spell out a necessity for peaceful or non-violent action. This is a point made by Mr Forst in his UK mission report ("The fact that they cause disruption or involve civil disobedience do not mean they are not peaceful."). That said, I can find no basis within Aarhus that authorises environmental defenders to deliberately break or flout the law or materially violate the lawful rights of others. This appears to extend to "civil disobedience", should that be in deliberate breach of the law in the Rawlsian sense (*A Theory of Justice*, ibid., where what is being avowedly "disobeyed" is the law, for a claimed higher purpose, framed by those protesting often as the protection of human and environmental ecosystems, ecology and life). No Aarhus authorisation or exemption for unlawful acts has been brought to my attention, including for acts of civil disobedience in violation of national law. Contrast that with the putative case of arrests and prosecutions or the granting of an injunction to prohibit entirely peaceful protesters such as those who have regularly gathered with placards near to Shell without infringing any of Shell's rights. Then it is strongly arguable that Aarhus would be engaged, with possible breaches of Article 3(8). I do not rule on that scenario as I have not been invited to, the situation not arising here. However, in cases of Aarhus breach, the mechanism is for the Special Rapporteur to

bring the concern to the attention of the national government through a letter of allegation, and if not satisfied with the response, or if none were forthcoming, to refer the matter to the Convention's Compliance Committee. On the question of acts of intentional or deliberate disobedience, I note what Leggatt LJ said in *Cuadrilla* at para 94:

> "… the disruption caused was not a side-effect of protest held in a public place but was an intended aim of the protest…this is an important distinction. …intentional disruption of activities of others is not 'at the core' of the freedom protected by Article 11 of the Convention …. one reason for this [is] that the essence of the rights of peaceful assembly and freedom of expression is the opportunity to persuade others… …persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way you desire….;"

166. What Aarhus is directed at explicitly in Article 3 is imposing obligations on signatories ("Each Party") to ensure that the exercise of rights under the Convention is not subject to penalisation, persecution and harassment. I cannot see how that would protect a protester who causes, for example, criminal damage and creates a significant hazard risk to health and the immediate environment by smashing the glass of petrol pumps. Each case, I emphasise, must be examined on its own facts and merits. However, I find nowhere in the Aarhus Convention an endorsement or authorisation of the right to break the law by committing crimes or unlawfully violating the rights of others or causing deliberate damage.

167. As to legal principle, the Aarhus Convention is not and cannot be determinative of these claims. However, I am persuaded, and find, that the substance of the Convention is relevant to the court's assessment of interferences with the Convention rights of protesters under the ECHR and proportionality analyses. It consequently has relevance for the court's equitable discretion confirmed by section 37 of the Senior Courts Act 1981. I must explain what relevance means in this context. It is a matter for the court to have regard to in making its discretionary decision rather than a freestanding and independently justiciable right, Aarhus not having been incorporated. It is relevant to recognise, and I do, that the United Kingdom remains a party to an international treaty that obliges member states to guarantee the rights of public participation in decision-making and access to justice in environmental matters in conformity with the provisions of Aarhus Convention and ensure that those who act in such conformity are not penalised, persecuted or harassed.

168. Having concluded the Aarhus analysis, I apply it to the overall questions of defences, balance of convenience and compelling need and proportionality under *Ziegler*. I have carefully considered whether the granting of the injunctive relief sought by Shell in this case exclusively directed at unlawful acts, while explicitly exempting lawful protest, would be, as the defendants maintain, contrary to Article 3(8) of the Aarhus Convention. Given that there is nothing in Aarhus authorising, for example, committing criminal offences, and that lawful protest is not prohibited under the terms of the injunction, I cannot find a putative breach of Aarhus.

169. I therefore add the Aarhus analysis to the four-part *Ziegler* analysis. I include the recognition of the United Kingdom's unincorporated treaty obligations under Aarhus in the proportionality assessment overall. Having done so, I concur with Hill and Cotter

JJ that the granting of the injunctive relief sought by Shell is necessary and proportionate, even including full Aarhus obligation recognition. The balance of convenience, which can be alternatively understood as the balance of prejudice, significantly favours the grant of injunctive relief as what is being prohibited in future is unlawful protest in breach of the lawful rights vested in the claimants where the potential damage caused by future unlawful breaches have the capacity to be irreversible, certainly should it involve serious physical injury or death. There is undoubtedly a compelling need to prohibit future unlawful protests in the way that the Supreme Court identified in *Wolverhampton* at para 167, in other words, to prevent the claimants from being subject to the torts pleaded. The explicit inclusion of the lawful protest exemption within the orders strikes the right balance between the competing interests. Defendants can apply to vary or set aside the injunctions or any of them and they will be regularly reviewed. While breaches of the claimants' rights in civil law may not be capable of remedy, there is no evidence that the defendants would in any event be able to provide a remedy in damages. The damage may be "grave and irreparable" as Marcus Smith J put it in *Vastint* at para 31(4)(d).

170. The question with regard to PUs is whether there is a realistic defence. The court has examined the filed defences of Ms Ireland and Mr Laurie in detail and concluded that they do not provide a defence to the claims. There is no logical basis to envisage that the position of PUs would be superior to the rejected defences of the appearing defendants.

171. Having analysed the relevance of the Aarhus Convention and completed the *Ziegler* analysis, including analysing balance of convenience and compelling need and proportionality, I return to my systematic analysis of the 15-part factor checklist and reach Factor 7.

§XI. ANAYSIS OF THE 15 FACTORS: PART II

7 Damages not adequate remedy

172. There is no evidence that either Ms Ireland or Mr Laurie would have the financial resources to compensate Shell for the damage caused by their protests, particularly if serious injury or the leaking of toxic substances resulted. I note that Ms Ireland has said in future she would not be prepared to participate in protests that damaged petrol pumps. However, presently Ms Ireland receives limited income. Mr Laurie was less clear about his future intentions about petrol pumps and spoke about the spectrum of risk in a way that suggested that he may indeed participate in such a protest in future should the injunctions be discharged. These are very specific examples, but there is a wider picture about economic torts. There is no undertaking from any of the named defendants to pay damages or costs. Against this, Shell has offered cross-undertakings in damages. I am satisfied that this would be an adequate remedy for the defendants. Hill J summarised the position as it had evolved before the court in these claims at paras 133-37:

> 133 "The note of Bennathan J's judgment indicates that he accepted that (i) the activities at the Haven and Tower sites would cause grave and irreparable harm; (ii) trespassing on the sites could lead to highly dangerous outcomes,

> especially given the presence on the sites of flammable liquids; and (iii) the blocking of entrances could lead to business interruption and large scale cost to the Claimant's businesses. He concluded that given the sorts of sums involved and the practicality of obtaining damages, the latter would not be an adequate remedy.
>
> 134 Johnson J accepted at [34] that the Defendants' conduct with respect to the petrol stations gives rise to potential health and safety risks and if those risks materialise they could not adequately be remedied by way of an award of damages. He took into account the fact that there is no evidence that the Defendants have the financial means to satisfy an award of damages, such that it is "very possible that any award of damages would not, practically, be enforceable."
>
> 135 The evidence before me shows that all of these considerations remain valid.
>
> 136 There is also an element to which the losses at the Haven and Tower sites may be impossible to quantify, though like Johnson J at [33], I do not find the Claimants' argument to similar effect with respect to the petrol stations persuasive.
>
> 137 However, for the other reasons set out at [133]-[135] above I am satisfied that damages would not be an adequate remedy for the Claimants."

173. I have separately and independently assessed the situation in respect of damages. I accept the submission of Ms Stacey that essentially "nothing has changed". I also note that Hill J's analysis was adopted by Cotter J at para 51.

174. I endorse the finding of Johnson J that the losses at Haven and Tower may be impossible to quantify, although I agree with Hill J that this is not the same for the petrol stations claim. That said, the potential harm through serious injury has the capacity to be irreversible. The cross-undertakings in damages offered by the claimants, I am satisfied, would be an adequate remedy for any future Convention breach caused by the operation of the injunctions. There is no doubt that the claimants have the resources to meet any award due.

175. Overall, I am satisfied that this requirement has been met.

8(a) Whether the defendants are identified in the claim forms and the injunctions by reference to their conduct.

176. As to PUs, I am satisfied that the claim forms and the subsequent injunctions identify any person falling into that category with the requisite clarity and proportionality. Geographical boundaries, where relevant, have been identified. Evidence before the court about the efficacy of the identification process is gleaned from the fact that in the petrol stations claim a large number of named individuals were joined to the claim when the matter came before Soole J. I am satisfied that this requirement has been met.

8(b) Whether PUs are capable of being identified and served

177. As explained, this process has been successfully conducted on an interim basis. As Ms Oldfield points out in her statement, the claimants have been liaising with relevant police forces and individuals have previously been identified and served. Shell undertakes to continue this approach: if any PUs are identified, Shell will serve them and make an application to join them to the claim as soon as reasonably practicable. In the meantime, there are provisions in the draft order for alternative service, a connected requirement I will come to.

178. The court finds that requirement 8(b) is met.

9 (a) Whether the terms of the injunctions are sufficiently clear and precise

179. The claimants seek final orders on terms that are substantially and materially identical to those previously sought by Shell and approved and granted by this court. That this was not a rote or routine approval process can be seen from the meticulous way in which Hill J examined the terms and directed changes to the geographical limits. Aside from that, she approved the terms of the injunctions at paras 154-56 in this way:

> "154. In my judgment the wording of all three injunctions is in clear and simple language, save for two caveats with respect to the petrol stations injunction: (i) some wording should be inserted before clauses 3.4-3.6 to reflect that the acts are only prohibited if they cause damage (such wording being clear on the face of the Tower and Haven injunctions but not on the petrol stations one); and (ii) clause 3.7 should be removed as it duplicates paragraph 4.
>
> 155. In respect of the petrol stations injunction, as Johnson J noted at [46], it is usually desirable that such terms should, so far as possible, be based on objective conduct rather than subjective intention. However, for the reasons he gives, the element of subjective intention in paragraph 2 ("with the intention of disrupting the sale or supply of fuel to or from a Shell Petrol Station") is necessary because of the nature of the tort of conspiracy to injure and to avoid the language being wider than is necessary or proportionate (noting the sweet wrapper example he gave at [21]).
>
> 156. I do not accept Mr Simblet's contention that the "encouragement" provisions are unduly vague: they are clearly defined as being linked with the underlying acts and are intended to ensure that the injunctions are effective. To the extent that they capture lawful activity, they are proportionate as explained under sub-issue (10) below."

180. The terms of the injunctions were also approved by Cotter J at para 55. I have independently scrutinised each draft order and conclude that the terms bear the qualities of clarity and precision.

9(b) Whether the injunctions only prohibit lawful conduct where no other proportionate means to protect claimant's rights

181. All three draft orders specify in terms that lawful protest is exempted. Hill J held at para 153:

> "153. Each injunction contains an order making clear that it is not intended to prohibit behaviour which is otherwise lawful. To the extent that it does, the same is a proportionate means of protecting the Claimant's rights for the reasons given under sub-issue (10) below."

182. I have considered the question of proportionality in the *Ziegler* analysis, and as part of the four-element analysis have considered whether the measure sought is the least interference with the Convention rights of the defendants consistent with achieving the legitimate aim of preventing future material breach of the claimants' civil law rights. I have found that this was the case. Overall, I find that requirement 9(b) is met.

10 Whether there is correspondence between terms of injunction and threatened tort

183. I have carefully considered each of the torts relied upon and compared the terms of each injunction to them. To that end, I prepared a table of the prime elements of each of the torts that the claimants rely on and have compared those elements with the acts to be prohibited under the draft orders. There is a clear and mirroring correspondence between the torts and the injunction terms. This issue has been previously considered by the court, with Hill J finding the necessary correspondence at paras 151-53 and Cotter J endorsing that conclusion after his consideration at para 54.

184. The issue of whether the injunction sought in the petrol stations claim corresponds to the tort of conspiracy to injure was litigated before Hill J. She ruled at para 151:

> "151. The acts prohibited in the petrol stations injunction reflect those in the petrol stations injunction necessarily amount to conduct that constitutes the tort of conspiracy to injure, provided that the injunction is read in full in the way described by Johnson J at [26 above]. This means that the concerns raised in Mr Simblet's submission to the effect that clause 3.4 ("affixing any object or person") would prohibit placing leaflets or signs on any objects on or in a Shell petrol station and his similar concerns about clauses 3.5 and 3.6 ("erecting any structure in, on or against any part of" or "painting or depositing or writing in any substance on any part of" a Shell petrol station) are to some degree mitigated by the fact that such activities are only prohibited by the injunction if they are (i) such that they damage the petrol station; (ii) done in agreement with others; and (iii) done with the intention of disrupting the sale or supply of fuel. These are similar to the "sweet wrapper" example given by Johnson J at [26] above: the prohibited acts in paragraph 3 need to be read in conjunction with the definition of Defendants. When that is done, it can be seen that they mirror the torts underlying the overarching tort of conspiracy to injure."

185. Nothing has changed since this analysis and no point was taken before me. I find that requirement 10 is satisfied.

11 Whether there is a clear and justifiable geographical limit

186. This matter was reviewed by Cotter J at para 56:

> "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."

187. The geographical scope of the Haven and Tower injunctions are precisely set out in the plans attached to the draft orders. The extent of these protected areas makes evident sense and is plainly justifiable. For example, in respect of Tower, it does not – and critically has not – prevented ongoing and regular protests in the vicinity of the building complex as set out in the filed chronology.

188. As to petrol stations, as indicated, Hill J refined the geographical extent. The reason was that on objection from the defendants, the court agreed that there needed to be greater clarity about the scope of injunction not to impinge on the public highway. The terms endorsed by Hill J, were also approved by Cotter J at para 56. The finding of Hill J, endorsed by Cotter J, makes evident sense and is justifiable, being logically connected to and proportionate to the need to protect the sites. No point was taken about this factor or the draft orders, reflective of their necessity and proportionality.

189. I find that this requirement is met.

12 Clear and justifiable temporal limit

190. The application in respect of each injunction is for a duration of 5 years. I questioned Ms Stacey about why such a period was necessary, notwithstanding that it had been granted in other protest cases (such as by Ritchie J in *Valero*), the court wanting to be independently satisfied. She made two submissions. First, that several environmental groups have made demands of the Government that the extraction of fossil fuels ends by 2030. Mr Eilering notes in his statement at paras 2.8-2.9:

> "2.8 it is clear to me that there is still a very real risk that without the protection of the Injunction Orders, protest activity would very likely return to the levels of unlawful activity previously experienced.
>
> 2.9 For example, I am aware of an article in which Just Stop Oil were quoted saying "*whilst governments are allowing oil corporations to run amok destroying our communities, the actions of individuals mean very little. Failure to defend the people they represent will mean Just Stop Oil supporters, along with citizens from Austria, Canada, Norway, the Netherlands and Switzerland will join in resistance this summer, if their own governments do not take a meaningful action*." Pages 279-286 of **Exhibit PE1**."

191. He fears that their activist campaigns are highly likely to continue until the extraction of fossil fuels ends. Second, Ms Stacey points to the costs of refiling and reissuing these claims. The petrol stations claim, for example, covers 1000 petrol stations across the

jurisdiction. It involves a very significant undertaking to implement the necessary warning signs at the sites. In all these circumstances, it is proportionate to grant a 5-year period in the order because of another vital consideration: there is built into the structure of the orders an annual review along with provision to vary or set aside. Should therefore there be a significant or material change, the grant of the injunctions or any of them can be actively and promptly revisited. I find myself in a position analogous to Ritchie J, who held at para 75:

> "Temporal limits - duration
>
> 75. I have carefully considered whether 5 years is an appropriate duration for this quasi- final injunction. The undertakings expire in August 2026 and I have thought carefully about whether the injunction should match that duration. However, in the light of the threats of some of the 4 Organisations on the longevity of their campaigns and the continued actions elsewhere in the UK, the express aim of causing financial waste to the police force and the Claimants and the total lack of engagement in dialogue with the Claimants throughout the proceedings, I do not consider it reasonable to put the Claimants to the further expense of re-issuing for a further injunction in 2 years 7 months' time. I have seen no evidence suggesting that those connected with the 4 organisations will abandon or tire of their desire for direct tortious action causing disruption, danger and economic damage with a view to forcing Government to cease or prevent oil exploration and extraction."

192. It should be noted that the "4 organisations" are JSO, XR, Youth Climate Swarm and Insulate Britain. I find that this requirement is satisfied.

13 Service

193. It is essential that all practical steps are taken to notify defendants and potential defendants. The Supreme Court addressed this point in *Wolverhampton* from para 226:

> *"*226 We recognise that it would be impossible for a local authority to give effective notice to all newcomers of its intention to make an application for an injunction to prevent unauthorised encampments on its land. That is the basis on which we have proceeded. On the other hand, in the interests of procedural fairness, we consider that any local authority intending to make an application of this kind must take reasonable steps to draw the application to the attention of persons likely to be affected by the injunction sought or with some other genuine and proper interest in the application (see para *167*(ii) above). This should be done in sufficient time before the application is heard to allow those persons (or those representing them or their interests) to make focused submissions as to whether it is appropriate for an injunction to be granted and, if it is, as to the terms and conditions of any such relief.
>
> 227 Here the following further points may also be relevant. First, local authorities have now developed ways to give effective notice of the grant of such injunctions to those likely to be affected by them, and they do so by the use of notices attached to the land and in other ways as we describe in the next section of this

> judgment. These same methods, appropriately modified, could be used to give notice of the application itself.
>
> …
>
> 228 Secondly, we see merit in requiring any local authority making an application of this kind to explain to the court what steps it has taken to give notice of the application to persons likely to be affected by it or to have a proper interest in it, and of all responses it has received.
>
> 229 These are all matters for the judges hearing these applications to consider in light of the particular circumstances of the cases before them, and in this way to allow an appropriate practice to develop."

194. This is precisely what has happened in the claims before me. The court has original evidence and updating evidence from Ms Alison Oldfield on behalf of Shell to explain the numerous steps that have been taken (her tenth statement is dated 24 September 2024; the court has considered all of them). For example, in the draft order in respect of the petrol stations claim, it is stated that:

> 9 "Pursuant to CPR 6.15 and 6.27 and CPR 81.4(c) and (d), service of this Order (with the addresses in the Third Schedule and the social media addresses redacted) shall be validly effected on the First Defendant and any other non-parties as follows:
>
> a. the Claimant shall use all reasonable endeavours to arrange to affix and retain Warning Notices at each Shell Petrol Station by either Method A or Method B, as set out below:
>
> Method A
>
> Warning notices, no smaller than A4 in size, shall be affixed:
>
> (a) at each entrance onto each Shell Petrol Station
>
> (b) on every upright steel structure forming part of the canopy infrastructure under which the fuel pumps are located within each Shell Petrol Station forecourt
>
> (c) at the entry door to every retail establishment within any Shell Petrol Station
>
> Method B
>
> Warning notices no smaller than A4 in size shall be affixed:
>
> (a) at each entrance onto the forecourt of each Shell Petrol Station

(b) at a prominent location on at least one stanchion (forming part of the steel canopy infrastructure) per set/row of fuel pumps (also known as an island) located within the forecourt of each Shell Petrol Station

b. Procuring that a Warning Notice is uploaded to www.shell.co.uk;

c. Sending an email to each of the addresses set out in the Second Schedule of this Order providing a link to and, specifically notifying them that a copy of this Order is available at, https://www.noticespublic.com/

d. Uploading a copy of this Order to https://www.noticespublic.com/

e. Sending a link to www.noticespublic.com data site where this Order is uploaded to any person or their solicitor who has previously requested a copy of documents in these proceedings from the Claimant or its solicitors, either by post or email (as was requested by that person)."

195. CPR Part 6 requires "good reason" to justify such alternative service steps. Where there are PUs, doing what can reasonably be done to publicise the prohibitions generally to potential future protesters is required. Similar efforts apply to the general public. It will not do if people are not given fair warning. The point of alternative service methods is, as stated in *Canada Goose* at para 82, to take such steps as can be reasonably expected to bring the proceedings to the attention of people who may be affected by the restrictions in future. To that end, the claimants have filed evidence of the extensive steps they have taken to meet this requirement in the three claims. The efforts mirror what was approved by Johnson, Hill and Cotter JJ. As put by Hill J at para 201-04:

201 "The alternative means of service proposed for the order in the Tower claim are (i) affixing warning notices to and around the Tower which (a) warn of the existence and general nature of the order, and of the consequences of breaching it; (b) indicate when it was last reviewed and when it will be reviewed in the future; (c) indicate that any person affected by it may apply for it to be varied or discharged; (d) identify a point of contact and contact details from which copies of the order may be requested; and (e) identify http://www.noticespublic.com/ as the website address at which copies of the order may be viewed and downloaded; (ii) uploading a copy of the notice to http://www.noticespublic.com/; (iii) emailing a copy of the notice to a series of emails relating to the main protest groups listed in the schedule of the order; and (iv) sending a copy of the notice to any person who has previously requested a copy of documents in the proceedings.

202 The alternative means of service proposed for the order in the Haven claim are (i)-(iii) above.

203 The alternative means of service proposed for the order in the petrol stations claim are (i)-(iv) above. The interim orders which I made on 28 April 2023 mirrored the terms of Johnson J's order and provided for the notices to be affixed by use of conspicuous notices in prescribed locations in the petrol stations, in alternative locations in the stations, depending on the physical layout and configuration of the stations.

204 The alternative means of service proposed for the amended claim form and any ancillary documents in the petrol stations claim are (ii)-(iv) above."

196. The alternative service methods previously used remain relevant and the court authorises their continued use. This includes service through notification through social media accounts where necessary. The claimants' filed evidence on this point has not been disputed by the defendants and I accept it. The balance of fairness is maintained because any person committed for possible future breach can make the argument that the service provisions have operated in a way that was ineffective and unfair in her or his case (see *Secretary of State for Transport v Cuciurean* [2020] EWHC 2614 (Ch) at para 63(9)).

197. I find requirement 13 satisfied.

14 Right to set aside or vary

198. This right has been explicitly included in all draft orders and will form part of any final orders granted. I find this requirement met.

15 Review

199. The duty to keep an injunction under review is equally applicable to final injunctions as it is to interim injunctions (*Barking* at para 77). Indeed, in *Barking* at para 105 the court stated that even where final orders are granted "it is good practice to provide for periodic review". As already indicated, an annual review is included in the draft orders and will form part of any final orders granted. I find this requirement met. In her evidence and updating evidence, Ms Oldfield explains how the claimants continue to keep the necessity for the injunctions under anxious review. I have no reason not to accept that evidence, nor was it disputed.

§XII. OVERALL CONCLUSION

200. I have carefully considered each of the three claims separately. The applications do not stand or fall together. They are, I emphasise, separate applications in separate claims being managed and heard together for administrative convenience. In each claim, the requirements ("the 15 factors") identified in *Valero*, summarising *Canada Goose* and *Wolverhampton*, have been met and this is highly significant in the exercise of the court's equitable discretion. In such matters, a court will grant injunctions on the assumption that they will be effective and obeyed. This point was made by the Supreme Court in *Wolverhampton* at para 141, where Lord Reed said:

> "In considering whether injunctions of this type comply with the standards of procedural and substantive fairness and justice by which the courts direct themselves, it is the compliant (law-abiding) newcomer, not the contemptuous breaker of the injunction, who ought to be regarded as the paradigm in any process of evaluation. Courts grant injunctions on the assumption that they will generally be obeyed, not as stage one in a process intended to lead to committal

> for contempt: see para 129 above, and the cases there cited, with which we agree."

201. As to Mr Laurie's concern that parallel proceedings in both the criminal courts and the civil jurisdiction "trap" him, it is vital to note that the distinct proceedings are directed at different matters. The Crown Court at Winchester, through the historic device of a jury of the defendants' peers, will decide whether Ms Ireland and Mr Laurie broke the criminal law during their protest at the service station at Cobham in August 2022. About that important question, nothing determined in this judgment has any relevance. This court respects the sacrosanct province of the British jury and its right to make its own decision. The injunctions sought here are exclusively aimed at prohibiting future breaches of the lawful rights possessed by Shell. Justice must be blind; it does not have sides. It must respect the rights of all parties coming before the court, and the court's duty where they clash is to strike the fair balance, ensuring that any necessary interference with the Convention rights of a defendant is proportionate. These final orders achieve that. They are anticipatory injunctions, with the objective of prohibiting future unlawful breaches of the claimants' rights. The right and fair balance is struck by ensuring that lawful protest is not prohibited, and indeed I observe that such lawful protests have continued with great regularity near to the Shell Tower in London. The "way out" of the trap that Mr Laurie perceives himself to be in is, as Ms Stacey submits, to give the undertaking that other defendants have given, and thereby promise that he will not engage in the specified unlawful acts in future. He does not wish to do that. Neither does Ms Ireland. That is their right. But nothing in these final injunctions prohibits their engaging in future protest that is lawful.

202. Should they protest lawfully and in conformity with the Aarhus Convention, acts of penalisation, persecution or harassment would undoubtedly be matters of grave concern to the Special Rapporteur. In pursuance of the mandate, the Rapporteur is authorised to take "measures" such as public statements and raising the matter with the relevant government. If there were no satisfactory governmental response, the issue can be referred to the Aarhus Convention Compliance Committee. This is a mechanism now recognised on the international plane. The Compliance Committee can request the member state to submit a Plan of (remedial) Action. Should a domestic court be tasked with exercising its discretion confirmed by section 37 of the SCA 1981, recognition of United Kingdom's Aarhus Convention obligations would plainly be relevant to the assessment of incorporated substantive rights such as those under the ECHR. I have little difficulty in reaching that conclusion in a similar way to the Supreme Court in *SG*.

203. In *Finch*, the Supreme Court set down in unsparing terms the "virtual certainty" that oil extracted from the ground "will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming." These are unquestionably issues of generational and inter-generational significance. It is not part of this court's function to quell, suppress or deter legitimate debate about these vital matters, nor to prohibit genuine and lawful protest lawfully conducted by genuinely concerned and sincere citizens. But the lawful rights of others which are recognised by the law cannot be ignored in this equation. This is the balance that the granting of these final orders strikes. The question of infringing the rights of others out of necessity was considered by the Court of Appeal in *Monsanto PLC v Tilly & Ors*. [2000] Env LR 313 ("*Monsanto*"; and see *Clerk & Lindsell on Torts* (24th ed.) at para 18-58). In *Monsanto*, Mummery LJ said at 339:

> "Public confidence in the legal system and in the rule of law would be undermined if the courts refused to enforce the law on the ground that defendants, who wished to establish the validity of beliefs sincerely and genuinely held, were entitled to rely on the public interest to justify wrongs to the property of others who did not share their point of view. It is extremely improbable that a reasonable man would regard the [necessity] defence proposed as an acceptable reason for the unauthorised presence of anyone, public official or fellow citizen, on his property or on the property of anyone else.
>
> On the other hand, the unavailability of public interest as a justification for trespass does not in any way curtail or prejudice the exercise by the defendants of their undoubted right in a democratic society to use to the full all lawful means at their disposal to achieve the[ir] aims and objects … Supporters can peacefully and effectively pursue those aims and gain publicity and public support for them in many different ways without the need to commit unlawful acts of trespass."

204. Here starkly is the issue posed by these protests and indeed these claims: what is justifiable in a functioning democracy when the actions of genuinely concerned citizens interfere with the rights of others who wish to go about their business or wish to exercise their property rights in peace? In this, the court does not take sides about the policy and political debate; it applies the law. In *Wolverhampton* at para 170-71, the Supreme Court stated that it was relevant to the court's discretion to consider whether other "non-judicial" remedies lie open to the claimants. In those gypsy/traveller injunction cases, for example, it was relevant to consider whether local byelaws could be passed by the local authority. Here, however, the claimants have no such powers open to them. They have turned to the court for protection of their substantive rights under the law. The remedy of an equitable injunction has been sought because, as Lord Reed said in *Wolverhampton* at para 238(iii)(a):

> "equity provides a remedy where the others available under the law are inadequate to vindicate or protect the rights in issue."

205. It is vital to return to the basis of these claims. The claimants are not inviting the court to determine whether trespass to land or private or public nuisance has been proved. The question is vitally different. These are applications for anticipatory or precautionary injunctions. The question is simply whether there is a real and imminent risk of future direct action by the defendants or PUs that carries with it the strong probability that the claimants' rights under civil law will be breached. It is on that exclusive and focused basis that the court exercises its discretion confirmed by section 37 of the SCA 1981 to grant the final orders sought as satisfying the just and convenient test – the true and paramount test.

206. Regular review is built into the very structure of the orders to ensure that changing circumstances do not "outflank or outlast" (*Wolverhampton*, para 167(iv)) the compelling need that resulted in the grant, as is the liberty for defendants to apply to vary or set aside. These are essential safeguards and checks and balances. Ultimately, as the Supreme Court remarked in *Wolverhampton* at para 18, the High Court when exercising its equitable discretion in respect of injunctions

> "possesses the power, and bears the responsibility, to act so as to maintain the rule of law."

207. It is this high responsibility that this court must give effect to in these three claims.

§XIII. DISPOSAL

208. Therefore, on the issues the court was invited to determine:

(1) Whether to grant final orders in each of the three claims:

a. Claim 1 (Haven): final order **GRANTED**;

b. Claim 2 (Tower): final order **GRANTED**;

c. Claim 3 (petrol stations): final order **GRANTED**.

(2) Whether the duration of the final orders should be 5 years: **GRANTED**.

(3) Whether alternative service orders should be granted: **GRANTED**.

(4) Whether to grant the application to remove the third defendant from Claim 3 (petrol stations) and consequently amend the claim form and particulars of claim to reflect the strike out: **GRANTED**.

209. As noted, the claimant in Claim 3 does not seek its costs against the defendants. If there is any other consequential application, it should be notified to the court accompanied by a draft order and skeleton by 4pm, five working days after electronic publication of the judgment. The other parties are granted 3 working days to respond. The applicant(s) granted one further day for a short reply after that. The court will consider whether it can determine the application on the papers. If not, a hearing will be directed.

210. I intend for this judgment to be handed down electronically and published to the National Archives.

ANNEX A

Defendants in Claim 3

Persons Unknown

First Defendant

Louis McKechnie

Second Defendant

XXX XXX
(Struck out on order of court following undertaking)

Third Defendant

Callum Goode

Fourth Defendant

Christopher Ford

Fifth Defendant

Sean Jordan
(also known as Sean Irish, John Jordan,
John Michael Jordan and Sean O'Rourke)

Sixth Defendant

Emma Ireland

Seventh Defendant

Charles Philip Laurie

Eighth Defendant

Michael Edward Davies
also previously known as Michael Edward Jones

Ninth Defendant

Tessa-Marie Burns
(also known as Tez Burns)

Tenth Defendant

Simon Reding

Eleventh Defendant

Kate Bramfit

Twelfth Defendant

Margaret Reid

Thirteenth Defendant

David Nixon

Fourteenth Defendant

Samuel Holland

Fifteenth Defendant

Annex B

Procedural history

Date	Event
3 April 2022	Haven protests
6-20 April 2022	Tower protests
28 April 2022	Initial petrol stations protests
5 May 2022	Bennathan J grants Haven and Tower interim injunctions
20 May 2022	Johnson J continues Haven and Tower interim injunctions
24 August 2022	JSO petrol station protest at Cobham services
26 August 2022	JSO petrol stations protest at Acton Vale and Acton Park
23 May 2023	Hill J grants petrol stations injunction and continues Haven and Tower and Petrol injunctions
15 March 2024	Soole J review (joinder and case management directions)
24 April 2024	Cotter J review and interim injunctions continued
7 May 2024	Mr Laurie's defence filed
16 May 2024	Ms Ireland's defence filed
16 October 2024	Mr Laurie's witness statement and skeleton argument

16 October 2024	Claimants' skeleton argument
17 October 2024	Ms Ireland's witness statement and skeleton argument
17 October 2024	Mr Laurie's skeleton argument
22-23 October 2024	Substantive hearing

Annex C

Materials

Item	**Pages**
Core hearing bundle Previous service bundle	1-413 414-7234
Miscellaneous bundle	7235-7766
Authorities bundle	636
Additional authorities bundle	166
Claimants' skeleton	31
Ms Ireland's skeleton	7
Mr Laurie's skeleton	10

Annex D

Draft undertaking (Claim 3)

Form of Undertaking

Shell U.K. Oil Products Limited V Persons Unknown (etc) and others with the claim number: QB-2022-001420 (the "Petrol Stations Injunction")

I promise to the Court that, whilst the Petrol Stations Injunction remains in force (including for the avoidance of doubt where it is continued at a renewal hearing or final hearing and in each case as amended by further order of the Court), I will not engage in the following conduct:

a) Directly blocking or impeding access to any pedestrian or vehicular entrance to a Shell Petrol Station forecourt or to a building within the Shell Petrol Station;

b) Causing damage to any part of a Shell Petrol Station or to any equipment or infrastructure (including but not limited to fuel pumps) upon it;

c) Operating or disabling any switch or other device in or on a Shell Petrol Station so as to interrupt the supply of fuel from that Shell Petrol Station, or from one of its fuel pumps, or so as to prevent the emergency interruption of the supply of fuel at the Shell Petrol Station; and

d) Causing damage to any part of a Shell Petrol Station, whether by:

   i. Affixing or locking myself, or any object or person, to any part of a Shell Petrol Station, or to any other person or object on or in a Shell Petrol Station.

   ii. Erecting any structure in, on or against any part of a Shell Petrol Station.

   iii. spraying, painting, pouring, depositing or writing in any substance on to any part of a Shell Petrol Station.

e) I confirm I will not carry out such activities myself, by means of another person doing so on my behalf, or on my instructions with my encouragement or assistance.

I confirm that I understand what is covered by the promises which I have given and also that if I break any of my promises to the Court I may be fined, my assets may be seized or I may be sent to prison for contempt of Court.

Signed …….

Name ……

Dated ……..