
**UNITED KINGDOM OIL PIPELINES LIMITED AND WEST LONDON PIPELINE AND
STORAGE LIMITED**

V

PERSONS UNKNOWN

**CLAIMANTS' SOLICITORS NOTE OF HEARING AND JUDGMENT OF PETER KNOX
QC SITTING AS A DEPUTY JUDGE OF THE CHANCERY DIVISION**

DATED 20 APRIL 2022

This note has not been produced, issued or approved by the High Court. This note has been produced on the direction of Peter Knox QC sitting as a Deputy Judge of the Chancery Division and constitutes the Claimants' solicitors' note of the Return Date Hearing of an interim injunction application that was heard by the High Court on 20 April 2022.

Katharine Holland QC and Yaaser Vanderman appeared for the Claimants.

3.1. The Hearing

- 1.1 Leading Counsel confirmed that she understood that there were some members of the press in the court room but that she did not know who else was present. Leading Counsel also confirmed that she had not had an opportunity to speak to any individuals present and nor had the clerk.
- 1.2 The Judge asked whether there was anybody in the room who represented Persons Unknown affiliated to, or connected with Extinction Rebellion or Just Stop Oil. No response was given and the Judge confirmed that this would be treated as though nobody has come forward.
- 1.3 Leading Counsel expressed her gratitude to the Judge for allowing a 40-minute delay to the start of the hearing. She added that she had not bottomed out the issue for which the extra time was requested but that she would seek to explain the issue to the Judge.
- 1.4 Leading Counsel confirmed that this hearing was the Return Date for an Injunction which the Judge granted through an order dated 8 April 2022 (the "**Order dated 8 April 2022**") and which specified 20 April 2022 as the date for the return hearing (this "**Return Date Hearing**").
- 1.5 Leading Counsel added that the Judge should have received a bundle containing updating evidence, the skeleton argument for today's hearing and a note of the hearing from 8 April 2022 (the "**Bundle**"). Leading Counsel explained that the updating evidence included:
 - (a) Factual evidence relating to what has transpired on the ground;
 - (b) The Claimants' Skeleton Argument for the Return Date Hearing; and
 - (c) Evidence about service in compliance with the Order dated 8 April 2022.

- 1.6 Leading Counsel explained that she planned to take the Judge through the updating evidence to demonstrate that the same grounds as for the 8 April hearing for injunctive relief applied.
- 1.7 The Judge asked Leading Counsel whether the Claimants had been served with an Acknowledgment of Service or a Defence. Leading Counsel explained that the Claimants had not and the anticipated position was that the Claimants will likely not receive an Acknowledgment of Service or a Defence within the 56-day period specified within the Order dated 8 April 2022. Leading Counsel added that this would enable the Claimants to apply for summary judgment or judgment in default.
- 1.8 Leading Counsel referred to the reason she had asked for the hearing start time to be delayed. Leading Counsel noted that it had come to the Claimants' attention that an order was made by Mr Justice Sweeting in the Queens' Bench Division dated 14 April 2022 ("**Mr Justice Sweeting's Order**"). Leading Counsel stated that this order affects some of the land which is subject to this injunction.
- 1.9 Leading Counsel explained that she was able to look at Mr Justice Sweeting's Order this morning after it was publicised by the North Warwickshire Borough Council's ("**NWBC**") twitter feed.
- 1.10 Leading Counsel explained that these proceedings were brought by NWBC against 18 named individuals and a 19th Defendant as *"persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels, in the locality of the site known as Kingsbury Oil Terminal"*.
- 1.11 Leading Counsel confirmed that Mr Justice Sweeting's Order did not affect the Buncefield Site.
- 1.12 Leading Counsel also explained that Mr Justice Sweeting's Order, was made under the following statutes:
- (a) Section 222, Local Government Act 1972;
 - (b) Section 130(5), Highways Act 1980; and
 - (c) Section 1, Localism Act 2011
- 1.13 Leading Counsel broadly set out the terms of Mr Justice Sweeting's Order, indicating that said Order places restraints on the organisation of, or participation in, any protest against the production or use of fossil fuels at Kingsbury Oil Terminal, *"taking place within the areas the boundaries of which are edged in red on the Map attached to" Mr Justice Sweeting's Order in Schedule 1 "or within 5 metres of those boundaries"*.
- 1.14 Leading Counsel clarified that Mr Justice Sweeting's Order does not prevent the Defendants from using any public highways within the area stipulated, for the purpose of travelling to or from a protest held outside the area in question.
- 1.15 Leading Counsel added that Mr Justice Sweeting's Order also contains a number of prohibited acts which include *"damaging any land including [...] roads, buildings, structures or trees on that land, or any pipes or equipment serving the Terminal on or beneath that land"* and, *"digging any holes in or tunnelling under [...] land, including roads"*.
- 1.16 The Judge sought clarification on whether Mr Justice Sweeting's Order restricts protests in the neighbourhood surrounding the Kingsbury Oil Terminal.

- 1.17 Leading Counsel clarified that paragraph 1(b) of Mr Justice Sweeting's Order prevents the Defendants subject to Mr Justice Sweeting's Order from carrying out any of the acts listed "*anywhere in the locality*" of the Kingsbury Oil Terminal.
- 1.18 The Judge summarised the position by stating that Mr Justice Sweeting's Order granted an injunction that protects some of the Claimants' land for this Return Date Hearing, but also protects land immediately next to the Claimants' land. The Judge asked whether Leading Counsel could confirm that his summary was accurate.
- 1.19 Leading Counsel confirmed that the summary was accurate and added that the Claimants had taken steps to try to speak to personnel from NWBC whose names appear on the face of Mr Justice Sweeting's Order in order to ascertain the position and to inform them of this application. Leading Counsel added that the Claimants had located the court documents associated with Mr Justice Sweeting's Order but that there had been insufficient time to review those documents.
- 1.20 Leading Counsel set out the Claimants' preliminary position in relation to Mr Justice Sweeting's Order, explaining that said Order should not affect the Claimants' own right to injunctive relief. Leading Counsel explained that Mr Justice Sweeting's Order enforces a Local Authority's statutory rights and the enforcement of those rights should not, in any way, prejudice the enforceability of the Claimants' own common law rights over land which they own.
- 1.21 The Judge agreed with Leading Counsel's submission that, on the face of it, there is no inconsistency between the Claimants' rights in this Claim and what had been granted by Mr Justice Sweeting's Order.
- 1.22 Leading Counsel agreed that it will likely not affect the submissions for this Return Date Hearing but wanted to ensure that the Judge was properly informed of this development. Leading Counsel also clarified that, for the moment, the Claimants' application is limited to the enforcement of their own private rights over their land.
- 1.23 The Judge agreed and indicated that had the Claimants been granted an order over public highways, then he might have had to marry up any order granted in this Return Date Hearing with the terms of Mr Justice Sweeting's Order. He reiterated however that since the Claimants' application in this case does not extend to any land outside their ownership, it is difficult to see why there would be any inconsistencies even if Mr Justice Sweeting's Order applies to part of the Claimants' land in this Claim.
- 1.24 Leading Counsel explained that she would like to review the court documents from the hearing of Mr Justice Sweeting's Order before making further submissions and that she was in the Judge's hands in terms of when it was convenient for her to do so. It was agreed that the hearing would be adjourned for 45 minutes in order for Leading Counsel to review the documentation.

[Court adjourned until 12.20 pm]

[Hearing recommenced at 12.20 pm]

- 1.25 Leading Counsel confirmed that they had reviewed the documents and that they had been able to make contact with NWBC's representatives. Leading Counsel also confirmed that NWBC are now aware of this Return Date Hearing and the application for an injunction.
- 1.26 The Judge asked whether NWBC had any comment on the Claimants' application.
- 1.27 Leading Counsel indicated that as far as she is aware, they did not have any comment on the Claimants' application.

- 1.28 Leading Counsel proceeded to take the Judge to the evidence relating to the Claimants' application for this Return Date Hearing.
- 1.29 Leading Counsel explained that the Judge had been sent a short skeleton for this Return Date Hearing because, while there had been an update in relation to the factual events on the ground, the grounds which justify the granting of the injunction remain the same.
- 1.30 The Judge indicated that he assumed that the Claimants' argument was that there has been quite a lot of activity from both affiliated organisations, as set out in the Second Witness Statement of John Armstrong, and therefore the risks to the Claimants' land remains active.
- 1.31 The Judge added that, as far as Extinction Rebellion are concerned, it appeared from the evidence that they have not been carrying out direct action at the two sites which are the subject of this application, but they have been participating in activities which go beyond mere protest. The Judge added that, from the evidence, he can see that on 10 and 12 April 2022, Extinction Rebellion shut down Vauxhall and Lambeth Bridges in central London and forced the closure of Lloyd's of London.
- 1.32 The Judge indicated that in both cases, it appears that the protestors were concerned with stopping and preventing the financing of fossil fuels which directly extends to the oil industry and therefore includes the activities carried out by the Claimants at the sites in question.
- 1.33 The Judge added that his view was that it is important to distinguish between Just Stop Oil, which has directly targeted the sites that are subject to this application and Extinction Rebellion who do not appear to have recently targeted the sites, but nonetheless still has a common aim of stopping and disrupting the fossil fuel industry.
- 1.34 Leading Counsel confirmed the Judge's understanding of the evidence and submitted that the activities of Extinction Rebellion relate to fossil fuels. She added that their activities are carried out with the intention of stopping and disrupting fossil fuels and hence their actions remain relevant to the sites held by the Claimants.
- 1.35 Leading Counsel submitted that paragraph 10 of the Second Witness Statement of John Armstrong updates the position on the sites.
- 1.36 The Judge indicated that it is not possible to determine the impact that the preliminary injunction granted on 8 April 2022 had on the reduction of activity at the sites. He emphasised however that this does not matter in terms of his determination as to whether the injunction should be continued.
- 1.37 The Judge added that Leading Counsel does not need to take him to the details of the factual evidence relating to the activity that has carried on since the hearing on 8 April 2022 as he was familiar with it. The Judge directed Leading Counsel to set out the Claimants' submissions relating to "*Persons Unknown*" having been given sufficient notice of this Return Date Hearing.
- 1.38 Leading Counsel proceeded to take the Judge to the service provisions in paragraph 13 of the Order dated 8 April 2022 and set out how the Claimants have complied with these provisions in order to inform Persons Unknown of said Order and this Return Date Hearing.
- 1.39 Leading Counsel took the Judge to paragraph 13(a) of the Order dated 8 April 2022 which required the Claimants to fix copies of said Order and other court documents from the hearing heard on the same date at 2 prominent locations on the perimeter of each site. Leading Counsel submitted that paragraphs 7 and 8 of the Second Witness Statement of Daniel Owen Christopher Talfan Davies, at Section C, Page 30 of the Bundle sets out how the Claimants have complied with this requirement and when this was achieved.

- 1.40 The Judge indicated it seemed that paragraph 13(a), on its own, would not draw anybody's attention to the Order dated 8 April 2022 as it seems like a plastic box with a bunch of papers within it, although he noted that the top of the box does contain a copy of the warning notice.
- 1.41 Leading Counsel then took the Judge to paragraph 13(b) which ordered the Claimants to upload the Order dated 8 April 2022 and the court documents from the hearing heard on that date onto the specified web link. To evidence the Claimants' compliance with this, Leading Counsel took the Judge to Section D, page 50 of the Bundle which contains a screenshot of the web link. Leading Counsel also explained that the documents were uploaded after the hearing on Friday 8 April 2022 and on Monday 11 April 2022.
- 1.42 The Judge asked Leading Counsel to confirm whether the documents were uploaded onto United Kingdom Oil Pipelines Limited's website as opposed to that of West London Pipeline and Storage Limited.
- 1.43 Leading Counsel confirmed that this was the case.
- 1.44 Leading Counsel then turned to paragraph 13(c) which ordered the Claimants to affix warning notices on the sites in the form set out in Schedules 6 and 7 to the Order dated 8 April 2022.
- 1.45 The Judge enquired about how large these warning notices were.
- 1.46 Leading Counsel confirmed that the notices were A2 as required by the Order dated 8 April 2022. Leading Counsel confirmed that notices were put up on 12 April 2022 and referred the Judge to the Witness Statement of Richard Thomas in Section D, pages 8-25 of the Bundle to highlight details of the Claimants' compliance.
- 1.47 The Judge asked Leading Counsel to confirm whether the warning notices were still affixed around the perimeter of the sites.
- 1.48 Leading Counsel submitted that she could not confirm this but that she would assume that they were still affixed around the sites.
- 1.49 The Judge also asked Leading Counsel to confirm whether the photographs showing the warning notices affixed on the patches of grass and the car park were on the Claimants' land.
- 1.50 Leading Counsel responded by stating that she cannot answer the question in relation to the specific photographs in the Witness Statement of Richard Thomas however, Leading Counsel proceeded to take the Judge to paragraph 4 in the aforementioned Witness Statement in Section D, page 9 of the Bundle. Leading Counsel indicated that this extract summarises the Claimants' compliance with the Order dated 8 April 2022 and that the Claimants arranged for 40 copies of the warning notices to be affixed either on the perimeter fences or on timber stakes at prominent points directly adjacent to the perimeter fences at both sites. Leading Counsel emphasised that the general spirit of the notice being affixed to the perimeter of the sites in question has been abided by.
- 1.51 The Judge agreed and indicated that the warning notices appear to be all over and around the sites. The Judge added that so long as the owners of the land on which the warning notices have been affixed are happy for them to be there, then this should not be an issue.
- 1.52 Leading Counsel then turned to the Claimants' service obligations under paragraph 13(d) of the Order dated 8 April 2022. Leading Counsel indicated that this placed an obligation on the Claimants to send emails to Extinction Rebellion and Just Stop Oil containing the Order dated 8 April 2022 and the court documents from the hearing heard on the same date.

- 1.53 Leading Counsel referred the Judge to paragraphs 19 and 20 of the Second Witness Statement of Daniel Owen Christopher Talfan Davies which sets out the details of the Claimants' compliance.
- 1.54 Leading Counsel confirmed that the emails were sent to two further emails for Just Stop Oil after the email indicated on the Order dated 8 April 2022 (juststopoil@protonmail.co.uk) bounced back. Leading Counsel explained that the Claimants then proceeded to send the email to 2 further email addresses contained within the Just Stop Oil website (juststopoil@protonmail.com and juststopoilpress@protonmail.com) to ensure compliance with the Order. Leading Counsel added that the Claimants have not received a bounce back from the aforementioned addresses.
- 1.55 Leading Counsel confirmed that paragraph 23 of the Second Witness Statement of Daniel Owen Christopher Talfan Davies, at Section C, page 33 of the Bundle indicated the Claimants' intention to serve further evidence for this Return Date Hearing.
- 1.56 Based on this, the Judge asked Leading Counsel how the Claimants had served the further evidence relied upon for this Return Date Hearing on the Defendants.
- 1.57 Leading Counsel confirmed that the evidence was served on the Defendants by the same methods indicated by paragraph 13(a), (b) and (d) of the Order dated 8 April 2022; namely by:
- (a) Sending emails of the evidence to Extinction Rebellion and Just Stop Oil;
 - (b) Uploading the evidence on the web link; and
 - (c) Adding the evidence to the transparent boxes at the sites.
- 1.58 Leading Counsel also referred the Judge to the Certificate of Service located in Section E, page 17 of the Bundle as evidence of service of the Second Witness Statement of John Armstrong, the Second Witness Statement of Daniel Owen Christopher Talfan Davies, the Bundle for this Return Date Hearing and the Claimants' Skeleton Argument for this hearing.
- 1.59 The Judge enquired as to whether the Claimants had received a reply to their service from any Defendants and whether the service emails were sent to the alternative email addresses; namely: (juststopoil@protonmail.com and juststopoilpress@protonmail.com).
- 1.60 Leading Counsel confirmed that they had not received a reply from any potential Defendants and that service was affected on the alternative email addresses indicated. Leading Counsel also confirmed that they had not received a bounce back from the alternative email addresses.
- 1.61 Leading Counsel also submitted that large notices indicating that further evidence was served had not been put up however the original warning notices, at Section D, page 48 of the Bundle, provided notice of the Return Date Hearing.
- 1.62 The Judge queried why the Claimants believed that this was sufficient notice of the Return Date Hearing for the average protestor.
- 1.63 In response, Leading Counsel submitted that the Return Date Hearing is part and parcel of what is specified in the Order dated 8 April 2022 and that the Claimants, using multiple methods, adequately brought the aforementioned Order to any potential Defendants' attention.
- 1.64 The Judge also asked how the Claimants' ensured that the transparent boxes located outside the sites remained there. In response, Leading Counsel indicated that the boxes were affixed using cable ties.

- 1.65 Leading Counsel submitted that that she would like to take the Judge to the draft Order proposed for this application (the "**Draft Return Date Order**").
- 1.66 Leading Counsel indicated that the terms of the Draft Return Date Order were largely the same as those contained within the Order dated 8 April 2022, however, it has been slightly revised, most substantively in relation to the temporal limit. Leading Counsel referred the Judge to the initial draft order sought as part of this application in Section C, page 13 of the Bundle and the new revised Draft Return Date Order in Section C, page 45 of the Bundle.
- 1.67 Leading Counsel referred the Judge to the amendment made to the undertakings at Section C, page 53 of the Bundle, indicating that an amendment has been made to reflect that fact that the application notice for the return date hearing had now been issued.
- 1.68 Leading Counsel then referred the Judge to paragraph 9 of the Draft Return Date Order which puts a temporal limit of 12 months on the proposed injunction and fixes a date rather than having the injunction continue pending trial.
- 1.69 The Judge asked Leading Counsel to explain why it had been drafted in this way.
- 1.70 Leading Counsel explained that this was done to bring the Draft Return Date Order in line with the Valero Return Date Order which fixes a temporal limit at paragraph 3:
- (a) *"With immediate effect until 23:59 on Friday 21 January 2023, unless varied, discharged or extended by further order, the Defendants and each of them are forbidden from ..."*
- 1.71 The Judge noted that the Valero Return Date Order fixes a temporal limit of less than 1 year to which Leading Counsel submitted that a temporal limit of 1 year would be appropriate given the circumstances of this case.
- 1.72 Leading Counsel indicated that the substance of the prohibited activities remained the same as before. Leading Counsel referred the Judge to the amendment to the time limits to give notice of an application to amend or vary the Draft Return Date Order – to 48 hours for notice to the Claimants of the application itself and 24 hours for any evidence relied upon as part of this application.
- 1.73 Leading Counsel noted that the new warning notices attached to the Draft Return Date Order would remain substantially in the same form however that they would be amended to reflect the terms of the Draft Return Date Order.
- 1.74 The Judge directed that a note of this Return Date Hearing should be served on the Defendants and added to the terms of the Draft Return Date Order. The Judge added that although the two campaign groups could have attended, it is appropriate to include such a note.
- 1.75 Leading Counsel then took the Judge to paragraph 16 of the Draft Return Date Order in Section C, page 49 of the Bundle under the heading "*Alternative Service Provisions for Future Applications by the Claimants in this Claim*".
- 1.76 Leading Counsel submitted that this amendment sets out the methods of service on the Defendants for any further applications the Claimants intend to make as part of this Claim and in summary include:
- (a) Adding the documents relating to any future application to the transparent boxes outside the sites;
- (b) Posting copies of these document on the UKOP web link; and

- (c) Sending emails to Extinction Rebellion and Just Stop Oil's email addresses.
- 1.77 The Judge queried why affixing warning notices around the perimeter of the sites to indicate an intention to make an application had not been included as part of the service provision for future applications.
- 1.78 Leading Counsel submitted that it is not possible to put evidence and applications on big notices around the sites.
- 1.79 The Judge stated that he would need to consider whether the methods stipulated in paragraph 16 of the Draft Return Date Order would be sufficient notice.
- 1.80 Leading Counsel referred the Judge to CPR 6.15 which indicates that an alternative method of service may be permitted if there is "*good reason*" to authorise such method. Leading Counsel also referred the Judge to Practice Direction 6A, paragraph 9.3 which sets out examples of what alternative methods may be deemed appropriate in certain situations.
- 1.81 The Judge indicated that he does not have to be persuaded on whether there is a good reason for an alternative method of service as this is obvious in this case. He explained that he is interested in determining what that alternative method ought to be. The Judge indicated that placing warning notices at the sites of the Claimants' intention to bring any future application would undoubtedly bring it to a protestor's attention.
- 1.82 Leading Counsel submitted that the principle of attaching documents at the site (by placing them in boxes) so that they are visible is an established method of service for court orders and applications affecting land. Leading Counsel also submitted that the test does not ask the Judge to consider each method of service in isolation but rather the effect of these alternative methods of service must be considered in their totality.
- 1.83 Leading Counsel also submitted that the protestors are part of organised campaigns that will have been informed and made aware of the Return Date Order, the Order dated 8 April 2022 and the methods of service stipulated within them, directly by the Claimants.
- 1.84 Leading Counsel proceeded to take the Judge to the test in relation to alternative methods of service contained in Practice Direction 6A, paragraph 9.2(3) which indicates the test in question is that the application "*is likely reach the person to be served by the method*"
- 1.85 The Judge queried whether there is a practical objection to setting up warning notices of any future application around the sites. Leading Counsel submitted that applications cannot be practically placed on large warning notices.
- 1.86 The Judge stated that the Claimants already have injunction warning notices currently affixed and queried whether the same could be done for any future applications by simply setting up warning notices of the Claimants' intention to make such an application.
- 1.87 In response, Leading Counsel submitted that the test is whether the application will "*likely [...] reach the person to be served by the method*". Leading Counsel submitted that any Defendant will likely be served by the three methods currently contained within paragraph 13 of the Draft Return Date Order.
- 1.88 The Judge asked whether there was a standard form for service in such a situation. Leading Counsel submitted that it would be wrong to suggest that there is a standard form.
- 1.89 The Judge indicated that the difficulty with the sites in question is that they consist of large plots of land that are not necessarily connected together.

- 1.90 Leading Counsel submitted that any potential Defendants will know that any future application will be served in the way intended by paragraph 16 because they will be served with the Draft Return Date Order stating this.
- 1.91 Leading Counsel added that any person who could be made a Defendant had had every opportunity to be joined to this Claim and that the Claimants should not be burdened with the same service and notice obligations imposed at the start of the proceedings as they have already given sufficient notice and information relating to this Claim.
- 1.92 In response, the Judge suggested adding further wording to the new warning notices attached to the Draft Return Date Order indicating that advertisement of any further applications may be made by the methods stipulated in paragraph 16 of the Draft Return Date Order. The Judge indicated that this will enable the protestors to keep themselves informed of any future applications made in this claim.
- 1.93 Leading Counsel indicated that the Claimants will prepare a revised warning notice to reflect such an amendment.
- 1.94 Leading Counsel referred the Judge back to the skeleton and indicated that the Claimants' submissions relating to whether there is a serious issue to be tried and whether the Claim is likely to succeed at trial essentially remain the same.
- 1.95 Leading Counsel also submitted that the NWBC injunction granted by Mr Justice Sweeting's Order relied upon the Valero injunction which relates to private land on the basis of a public authority's powers. Leading Counsel submitted the same principle applies in this situation and therefore Mr Justice Sweeting's Order should not affect this application.
- 1.96 Leading Counsel submitted that the submissions in relation to the balance of convenience were the same. Section 12(2)(a) of the Human Rights Act 1998 requires the Claimants to show that they have taken all practicable steps.
- 1.97 Leading Counsel proceeded to take the Judge to paragraph 11.8 of the Skeleton Argument from 8 April 2022 in relation to the test for pre-emptive relief against persons unknown.
- 1.98 Leading Counsel submitted that it remains impossible to name Defendants to this Claim as since the 8 April 2022 Order had been made, there has been no direct action on the sites in question and no people have been arrested. The fact that the Claim brought by NWBC names individuals does not mean that the Claimants are able to name individuals.
- 1.99 The Judge noted that NWBC had been assisted by the police in naming individuals.
- 1.100 Leading Counsel submitted that in the Valero injunction, they had applied for a disclosure order from the police. Leading Counsel confirmed that the Claimants had not applied for a disclosure order and were not obliged to do so where no direct action on the sites. Leading Counsel submitted that the individuals arrested around the sites have been arrested on land that is not held by the Claimants.
- 1.101 Leading Counsel indicated that the legal position was such that if the Claimants become aware of people who are Defendants then they will need to name them.
- 1.102 The Judge asked whether the Claimants will have to take reasonable steps to determine any potential Defendants.
- 1.103 Leading Counsel referred the Judge to the emails that had been sent to the campaign groups at tab 13 of the Bundle and in which potential defendants had been invited to identify themselves and

to which emails no one responded. Leading Counsel confirmed that she had only just seen the NWBC injunction naming individuals and that Valero had obtained an injunction without naming anyone.

- 1.104 Leading Counsel referred the Judge to the case of *Canada Goose* in tab 9 of the Authorities Bundle and paragraph 82 and confirmed that no issue had been taken with this paragraph including in the subsequent case of *Barking & Dagenham*.
- 1.105 The Judge asked Leading Counsel if her submission was that people have been named as protesting nearby the Claimants' sites, but the Claimants cannot say that these same people will trespass on their land.
- 1.106 Leading Counsel confirmed that this was the case and submitted that the Claimants have received no responses to the emails sent to Extinction Rebellion and Just Stop Oil despite the Claimants' solicitors encouraging any potential Defendants to come forward. Leading Counsel added that the Claimants were therefore unable to identify individuals.
- 1.107 Leading Counsel confirmed following further queries from the Judge that the Claimants' position as to why those who have been arrested around the sites in question cannot be named as Defendants in this Claim is that the Claimants do not have sufficient cause to believe that those individuals will personally trespass or obstruct access to their sites. Leading Counsel also indicated that there have been no arrests on the Claimants' sites. Leading Counsel added that this does not alleviate the risk of certain unknown protestors carrying out such actions in the future following encouragement from Extinction Rebellion or Just Stop Oil.
- 1.108 Leading Counsel then referred the Judge to the requirement for an injunction to have clear geographical and temporal limits. Leading Counsel submitted that with regard to geographical limits, the injunction is limited to the Claimant's land and private access routes and by clear plans for both sites.
- 1.109 Leading Counsel then turned to temporal limits and submitted that the injunction will expire at the fixed date indicated, until further order or at trial. Leading Counsel submitted that this would be appropriate because the evidence suggests that there is no cut off point for these campaigns. Leading Counsel added that both campaigns have repeatedly expressed their intention to keep going until the government yields to their demands.
- 1.110 Leading Counsel accepted that the proceedings will have to go to trial to get a final order, however, it was submitted that the Claimants having to come to court every 6 months to continue the interim injunction when the evidence clearly suggests that the action will continue is not an appropriate use of the Court's time and resources and would cause an undue strain .
- 1.111 The Judge pointed out that the Valero injunction was granted only for a 10-month period.
- 1.112 Leading Counsel took the Judge to the decision of Mr David Holland QC in *Divider 5*, paragraph 4.2 of the Authorities Bundle. Leading Counsel read the relevant extract to the Judge and explained that the injunction in this case was granted for just over a year.
- 1.113 Leading Counsel then proceeded to take the Judge to paragraph 34 of the *INEOS* case (page 76 of the authorities bundle) which sets out the guiding principle for determining the length of the injunction.
- 1.114 The Judge stated that the terms of the injunction must correlate to the tort and that he would need to work out how long the threatened tort will continue in this case.

- 1.115 Leading Counsel also took the Judge to paragraphs 68 and 70 the *Canada Goose* case and paragraph 108 of the *Barking & Dagenham* case and submitted that there is no set rule for determining how long an interim injunction should be granted however that it was good practice to have periodic reviews.
- 1.116 The Judge indicated that 12 months seemed like a long time in response to which Leading Counsel submitted that there was evidence in the Bundle of the Just Stop Oil having said that they were not going to stop. Leading Counsel also confirmed the Claimants' anticipated intention to make an application for default judgment after the 56 day limit for service of a defence has expired and in any event apply for summary judgment if a defence is received. Leading Counsel submitted that the context of the Claim is such that the seriousness and gravity of the potential actions by the protestors and the potential expense the Claimants may have to incur justifies a 12 month temporal limit. Leading Counsel added that it would not be a practical use of the Court's resources (given the amount of applications currently before it) to have a shorter injunction period, particularly since the risk to the Claimants' land will remain present and that she relied upon the David Holland QC judgment.

[Court rises to reconvene at 3.30 pm for judgment.]

[Hearing recommenced at 3.30 pm]

2. Judgment of Peter Knox QC sitting as a Deputy Judge of the Chancery Division

On 8 April 2022, I granted an interim injunction on short notice to the Claimants to restrain persons unknown from entering the respective premises and interfering with the Claimants' private access rights. The unknown persons are those who enter the premises or interfere with the Claimants' private access rights in connection with the Just Stop Oil or Extinction Rebellion campaigns.

The properties in question in this matter are the Buncefield and Kingsbury Oil Terminals as identified by the plans in the Order dated 8 April 2022. The injunction in the Order was granted until the Return Date today.

Since the injunction was granted, I am satisfied that the Claimants have served sufficient notice of the Return Date in the manner specified in paragraph 13 of the Order dated 8 April 2022, that is to say that in summary:

- Firstly, on 13 April 2022, the Claimants placed copies of the Order in transparent boxes in two prominent locations of each site. The sealed Order explained that there would be a Return Date hearing on 20 April 2022. Notices of the Return Date and the Order dated 8 April 2022 were affixed to the top of the transparent boxes and court documents including a copy of the sealed claim form and the particulars of claim were added to the boxes.
- Secondly, on 12 April 2022, the Claimants uploaded the sealed Order dated 8 April 2022 on their website.
- The third method of service was that on 12 April 2022, the Claimants affixed a large number of notices in A2 size in the form set out in the Schedules 6 and 7 to the Order dated 8 April 2022, either by attaching them to the fences of the properties or attaching them to wooden posts adjacent to the perimeter fence.
- Fourthly, on 13 April 2022, the Claimants' solicitors served further notice of the application by email to Just Stop Oil and Extinction Rebellion's email addresses. The email initially sent to juststopoil@protonmail.co.uk subsequently bounced back so the notice was sent in the alternative to juststopoil@protonmail.com and juststopoilpress@protonmail.com and these are the emails currently published on Just Stop Oil's website.

I am also satisfied that all the documents relating to this Return Date Hearing have been served. This was done by including the documents in two transparent boxes at each of the sites, by making the documents available on the UKOP web link and by serving them to the email addresses of Just Stop Oil and Extinction Rebellion.

Despite the aforementioned methods of service, nobody has attended the hearing on behalf of the Defendants, nor has any evidence been served on their behalf even though the Order dated 8 April 2022 made provision for such evidence to be served by the Defendants by 4.30 pm on 19 April 2022.

I therefore propose to continue the Order made on 8 April 2022 and which order was then amended on 12 April 2022 to correct minor details and I propose to do so for the following reasons:

- For the reasons given on 8 April 2022, I am satisfied that there is a serious issue to be tried, in particular as the Claimants are the owners of the land that is subject to this application and there is good reason to believe that unless restrained, protestors will seek to enter the sites in question and disrupt the operations carried out by the Claimants.
- The balance of convenience favours the grant of an injunction; the campaigners do not need to trespass on the sites in question or to interfere with the private accessways to the sites in order to carry out lawful protests;
- I am satisfied that damages alone would not be an adequate remedy;
- The Claimants have given a cross undertaking in damages; and
- In particular, I am satisfied that the activities of Just Stop Oil and Extinction Rebellion since 8 April 2022 show that there is a serious risk that supporters of said organisations will seek to enter the premises and interfere with the rights of access in order to disrupt the Claimants' activities. I say this because of the factual evidence submitted to the Court and contained in the Second Witness Statement of John Armstrong dated 14 April 2022. I shall summarise some of this evidence, however, the details are set out in paragraphs 12-23 of the Statement:
 - (a) Firstly in relation to the Buncefield site, on 10 April 2022, 40 members of Just Stop Oil blocked the entrance of the Buncefield Oil Terminal. The blockading of the entranceway resulted in 13 arrests being made by police. It seems to have taken approximately 9 hours to remove the protestors and reopen the entranceways. On the same day, Just Stop Oil's twitter page quoted a protestor indicating that *"I won't be stopped, and I won't back down until our government stops trading our lives for profit."*
 - (b) Secondly in relation to the Kingsbury site, on 8 April 2022, it was reported that 37 protestors had broken into the Kingsbury Oil Terminal, at what I understand is the oil depot not held by the Claimants, and chained themselves to pipes. This was about 0.2 miles away from the land subject to this application. It was also reported that on 10 April 2022, Just Stop Oil gained access to part of the depot by digging a tunnel under Piccadilly Way by using a modified caravan to hide the tunnel. Again on the same day, Warwickshire police reported that 29 individuals had been at the site and on 11 April 2022, Just Stop Oil published a statement indicated that *"a number of people [were] still occupying a tunnel under a major access route to the Kingsbury Oil terminal"*.
 - (c) In addition to the activities at the sites, there is evidence of direct action taken by Just Stop Oil throughout the UK and on 10 April 2022, Just Stop Oil published a press release indicating that campaigners have continued to *"disrupt oil supplies from oil terminals in Warwickshire, Hertfordshire and Essex, marking the tenth day of action in support of their demand that the UK government end new oil and gas projects in the UK."* The three sites referred to include the Kingsbury and Buncefield Terminals and the Gray's Inter Terminal

in Essex. Just Stop Oil declared their intention to "*continue to block oil terminals until the government makes a statement that it will end new oil and gas projects in the UK*"

- (d) It was also reported that at 6.30 am on 10 April 2022 that Just Stop Oil protestors entered Gray's Inter Terminal in Essex. Images of individuals lying on the pipework were posted by Just Stop Oil's twitter account along with statements indicating that "*[t]his will stop when @10DowningStreet says they will #StopAllNewFossilFuelLicences!*" and "*[w]e will continue to disrupt until the govt makes a statement that it will end new oil & gas projects in the UK*". Later that day, Essex police described the protestors' activities as "*exceptionally dangerous*".
- (e) It was reported by the Sunday Times that direct action from those sites resulted in the in the closure of approximately 1,200 garages and the Fair Fuel Campaign had stated that "*1 in 3 garages have run dry of petrol*". Just Stop Oil indicated on their website that their direct action "*will continue to significantly impact on fuel availability at petrol pumps*" and they published photographs of gas station closures and lengthy gas station queues.
- (f) Just Stop Oil claimed on their website on 10 April 2022 that "*[o]ver 400 people have joined actions that have succeeded in stopping operations for up to 24 hours at a time at 11 critical oil terminals that supply fuel to hundreds of petrol stations*".

As far as Extinction Rebellion is concerned, the evidence is they are campaigning to see the end of fossil fuels and hence also the end of the use of oil. Since 8 April 2022, they have targeted industries affiliated to the fossil fuel industry. Two recent examples contained within the Second witness Statement of John Armstrong are:

- (g) On 10 April 2022, members of Extinction Rebellion forced the closure if Lambeth and Vauxhall bridges in central London. Protestors in Vauxhall Bridge laid out a banner which read: "*for health's sake stop financing fossil fuels*". The bridges were eventually re-opened after the Metropolitan Police imposed conditions under Section 14 of the Public Order Act 1986 which enabled them to physically remove protestors.
- (h) On 12 April 2022, it was reported that Extinction Rebellion members forced the closure of the world's biggest insurance market, Lloyd's of London. Extinction Rebellion posted an article on their website under the heading: "*We have closed Lloyd's of London!*" Exhibits in the papers before me show that the article contained extracts that read: "*how bad is Lloyd's of London*" and "*Lloyd's insures 40% of the world's energy, including some of the world's worst fossil fuel projects [...]. Their business is fuelling Climate Breakdown. Without insurance, a fossil fuel project can't go ahead. Companies like Lloyd's [...] are effectively enabling them.*"

Although there is no evidence that Extinction Rebellion have targeted the sites in question since 8 April 2022, it is plain that one of their main targets is the oil industry more generally and they will do what they can to disrupt oil distribution of oil across the UK, including targeting the Claimants' sites. For those reasons I continue to be satisfied that there is a serious issue to be tried. It is important to note that this is a prima facie view on the evidence before me which on the balance of probabilities favours an injunction being granted.

In relation to persons unknown, I am satisfied that all practicable steps been taken to notify the Defendants as set out in the Order dated 8 April 2022 and therefore section 12(2) of the Human Rights Act 1998 has been satisfied. Secondly, I am satisfied, based on the current information before me and having regard to the right of freedom of expression, that the Claimants will likely be able to establish at trial that any publication should be restrained because this Order does not stop Just Stop Oil or Extinction Rebellion from exercising an effective right of protest against the oil or fossil fuel industries. It is convenient and proportionate to grant this further order given the considerable disruption which the protestors seek to cause.

Further, I am satisfied that the geographical limit is proportionate because it goes no further than the Claimants' own land and the Claimants do not seek to restrain the supporters of the campaigns from going on to the public highways next to the sites.

This therefore leaves 4 more points to consider:

1. Is it right to continue an Order against Persons Unknown or should there be naming of people?

On this point, I am satisfied that it remains impossible to name Defendants in this Claim. The names of some of those who were arrested near the sites could be found out from Police, however, there is no evidence that those particular protestors will trespass or cause nuisance at the Claimants' sites. The risk from the sites comes more generally from unidentified supporters of the Just Stop Oil or Extinction Rebellion campaigns.

2. The second point relates to how long the Order should last for?

Ms Holland asked for a 1-year temporal limit. Other cases suggest 9 months – 1 year might be appropriate. The principle behind determining the duration is that the injunction should be no longer than the risk of the threat of the tort. In this case, I accept 1 year from today would be an appropriate temporal limit for this injunction. This is because, whatever the rights and wrongs of the movements are, it is clear that Extinction Rebellion and Just Stop Oil are well-organised movements and their whole campaign is intended to be a long-term project in each case. Expecting the Claimants to come back to Court within a period shorter than 1 year would therefore be a disproportionate expense and would be a waste of the Court's resources. I am also told by Ms Holland that the Claimants intend to apply for default judgment or, in the event of a defence being served, to apply for summary judgment. If so, this order will be subsumed within any final order.

3. The third question relates to what notice should the Order provide, for making future applications in this Claim?

If the Claimants want to make future applications, the Court will want to know that sufficient notice to the Defendants has been given so as to satisfy the requirement in Section 12(2) of the Human Rights Act 1998.

I am satisfied that this will be the case as long as provision is made in warning notices that will be affixed around the perimeter of the sites which makes it plain how any future application in this Claim will be served. I am prepared to authorise the service of future applications in the methods envisaged by Ms Holland: that is to say by adding the application notice and any relevant documents to the transparent boxes at the sites, sending them by email to Extinction Rebellion and Just Stop Oil and uploading them to the UKOP web link.

There is however, one point I remain concerned about. It may be helpful if the Claimants placed large notices of their intention or proposal to make any future application on such and such a date so as to avoid any future argument on whether sufficient notice was given to satisfy Section 12(2) of the Human Rights Act 1998. This is a point I am willing to discuss with Leading Counsel following this judgment.

4. The final point relates to an Order made by Mr Justice Sweeting whose title is NWBC v 18 named individuals with the 19th individual being "*Persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels, in the locality of the site known as Kingsbury Oil Terminal*"

In other words it is an order which affects the Kingsbury Oil Terminal and the terms of the Order are that Defendants shall not:

"a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil

fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the "buffer zone").

For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone."

And

The second part of the Order continues to prohibit a list of activities similar to those which are the subject of this Claim.

It appears from the plan attached to the Order that the areas caught by Mr Justice Sweeting's Order are not simply the oil depot at Kingsbury, which is not held by the Claimants, but various parts of the terminal which do appear to be the Claimants land. The following question therefore arises: does this make any difference to the order I shall make today?

In my judgement it does not for the following reasons:

- (a) First it relates to the exercise by a public authority of their statutory rights and this should not, and does not, affect my judgment as the Order in this Claim relates to the Claimants' private rights over their own private land. Indeed, Mr Justice Sweeting's Order may only assist the Claimants as it seems to prevent protestors from coming onto the Claimants' land; and
- (b) Secondly, it seems that Mr Justice Sweeting's Order prevents protestors from coming onto part of the Claimants' land only. While this may overlap with the order the Claimants' seek today, I do not see why the Claimants' should not be entitled to their own relief.

I am told that the Claimants have been in touch with NWBC to inform them of this application, but I am not aware of any further correspondence.

I therefore propose to make an order in the terms put forward by Ms Holland subject to the provisions regarding notice of future applications which I would like to discuss with Ms Holland.

3. Discussion on terms of Order following judgment

- 3.1. The Judge considered that, in the event of a new application being made by the Claimants, there may be protestors who are not aware. Therefore, would there be any great difficulty in stating on the warning notices saying that an application was going to be made on x date for an Order in the following terms?
- 3.2. Leading Counsel stated that in terms of the service test set out in the CPR, the application would be likely to come to their attention. But that the Judge was also right to say be careful because the higher test in s.12(2) of the Human Rights Act 1998 would have to be satisfied as well. The onus would be on the Claimants' team to consider at that juncture in the context of those facts whether all practicable steps had been taken. It could be at that stage that the circumstances have changed – for example, there may be a channel of communication with the Defendants, etc.
- 3.3. The Judge said that as long as the Claimants were aware that if they did not do more than was provided for in Order, they might be at risk in respect of s.12(2) of the Human Rights Act 1998. It was a matter for them. The Judge accepted that he did not have to make an Order in those terms and did not propose to do so. But he wanted it understood that he was not intending to prejudge what was the relevant test for s.12(2) of the Human Rights Act 1998.