**IN THE HIGH COURT OF JUSTICE Claim No PT-2002-000303 BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES CHANCERY DIVISION**

**BETWEEN:**

**UNITED KINGDOM OIL PIPELINES LIMITED**

**First Claimant WEST LONDON PIPELINE AND STORAGE LIMITED**

**Second Claimant**

**-and-**

**PERSONS UNKNOWN (AS FURTHER DEFINED IN THE CLAIM FORM)**

**Defendants**

**CLAIMANTS’ SKELETON ARGUMENT**

**FOR THE HEARING ON [ ]**

Time estimate for reading: circa 1hr

Suggested pre-reading:

* Order of Rajah J, dated 21 April 2023 **[HB/142]**
* draft Order **[HB/44]**
* First Witness Statement of Peter Davis, dated 7 April 2022 **[HB/159]**
* First Witness Statement of John Armstrong, dated 7 April 2022 **[HB/167]**
* Second Witness Statement of John Armstrong, dated 14 April 2022 **[HB/193]**
* Third Witness Statement of John Armstrong, dated 5 April 2023 **[HB/202]**
* Fourth Witness Statement of John Armstrong, dated 6 July 2023 **[HB/220]**
* Fifth Witness Statement of John Armstrong, dated 22 September 2023 **[HB/236]**

References to the main Hearing Bundle are in the form “**[HB/x]”**. References to the three Exhibit Bundles are in the form “[**EB1/x**]”, **[EB2/x]**” and “**[EB3/x]**”. References to the Authorities Bundle are in the form “**[AB/x]**”.

1. **INTRODUCTION**
2. This is the Claimants’ application for summary judgment, pursuant to CPR Part 24, in relation to its claim for final injunctive relief against the Defendants, who are environmental protestors, on the basis of trespass and nuisance.
3. Interim injunctions have previously been granted in this claim by:
   * 1. Peter Knox KC (sitting as a Deputy High Court Judge) on 12 April 2022 (the “**First** **Knox Order**”) **[HB/94]**;
     2. Peter Knox KC (sitting as a Deputy High Court Judge) on 21 April 2022 (the “**Second Knox Order**”) **[HB/125]**; and,
     3. Mr Justice Rajah on 21 April 2023 (the “**Rajah Order**”) **[HB/142]**.
4. On each of these occasions, the Judges were satisfied that the Claimants were “*likely”* to succeed at trial, pursuant to s.12(3) of the Human Rights Act 1998.[[1]](#footnote-2)
5. In line with its obligations to progress the claim, the Claimants now seek a final injunction in materially the same terms as the Rajah Order to last for 5 years with provision for an annual review hearing. This is the same approach that has recently been adopted in similar cases.[[2]](#footnote-3)
6. As well as the evidence relied upon to date, the Claimants also rely upon the Fourth and Fifth Witness Statements of John Armstrong, dated 6 July 2023 and 22 September 2023, respectively (“**Armstrong 4**”and “**Armstrong 5**”), which provide the Court with the most up-to-date position.
7. Notwithstanding the provision for the Defendants to serve any acknowledgement of service, admission or defence within 56 days of the First Knox Order (First Knox Order, §16), no such document has ever been received by the Claimants. That period long since expired, the Claimants seek the Court’s permission to make this application under CPR r.24.4(1)(i).[[3]](#footnote-4) To date, there has been no engagement by anyone served or notified of the proceedings.
8. In light of all the circumstances, including the continuing threat posed by the Defendants, the Claimants’ position is that the Defendants have no real prospect of successfully defending the claim and there is no other compelling reason why the case should be disposed of at trial: CPR r.24.2.
9. **SERVICE**
10. On 11 July 2023, the application documents were uploaded to <https://ukop.azurewebsites.net>. On the same day, an email was sent to [xr-legal@riseup.net](mailto:xr-legal@riseup.net), [juststopoilpress@protonmail.com](mailto:juststopoilpress@protonmail.com), [juststopoil@protonmail.com](mailto:juststopoil@protonmail.com) and [info@juststopoil.org](mailto:info@juststopoil.org)[[4]](#footnote-5) informing them that the Claimants had made the summary judgment application and where the documents could be accessed: First Witness Statement of Antony Phillips, dated 24 July 2023 (“**Phillips** **1**”), §§5-12 **[HB/232]**. These methods satisfied the alternative service requirements set out in paragraph 9 of the Rajah Order and the documents were deemed served on 11 July 2023.
11. On 18 July 2023, the Claimants sent an email to [xr-legal@riseup.net](mailto:xr-legal@riseup.net), [juststopoilpress@protonmail.com](mailto:juststopoilpress@protonmail.com), [juststopoil@protonmail.com](mailto:juststopoil@protonmail.com) and [info@juststopoil.org](mailto:info@juststopoil.org)[[5]](#footnote-6) confirming that the hearing would take place during a 3-day window starting on 3 October 2023. The notice of hearing was also uploaded to <https://ukop.azurewebsites.net> on the same day: Phillips 1, §§13-18 **[HB/233]**. These methods satisfied the alternative service requirements set out in paragraph 9 of the Rajah Order and the document was deemed served on 18 July 2023.
12. On 27 September 2023, the bundles for the hearing, including Armstrong 5, were uploaded to <https://ukop.azurewebsites.net>. An email was sent on 28 September 2023 to [xr-legal@riseup.net](mailto:xr-legal@riseup.net), [juststopoilpress@protonmail.com](mailto:juststopoilpress@protonmail.com), [juststopoil@protonmail.com](mailto:juststopoil@protonmail.com) and [info@juststopoil.org](mailto:info@juststopoil.org) informing them that the hearing and exhibit bundles, including Armstrong 5, could be accessed from this website. These methods satisfied the alternative service requirements set out in paragraph 9 of the Rajah Order and the documents were deemed served on 28 September 2023.
13. Consequently, the notice requirements in s.12(2)(a) of the Human Rights Act 1998[[6]](#footnote-7) and the service requirements in CPR r.24.4(3)[[7]](#footnote-8) have been satisfied.
14. **BACKGROUND**
15. **The Sites**
16. This application relates to two sites (the “**Sites**”):
17. Site 1: This is the West London Buncefield oil terminal, located on the edge of Hemel Hempstead. The site is one of the largest oil-products storage depots in the UK, with a capacity of about 65 million litres of fuel. Details are set out in the First Witness Statement of Peter Davis dated 7 April 2022 (“**Davis 1**”), §§15-18 **[HB/162]**.

In relation to the relevant property interests pertaining to Site 1, the First Claimant is the registered proprietor of three registered freehold titles, the registered proprietor of one leasehold title and also has a leasehold right of way over an access track. The Second Claimant is the registered proprietor of a further freehold title. Details are set out in Davis 1, §§24-28 **[HB/163]**.

This private access track on land adjoining Site 1 leading from the public highway to Site 1 is referred to as the “**Site 1 Access Route**”.

A plan for Site 1 and the Site 1 Access Route can be found at **[HB/11].**

1. Site 2: This is the Kingsbury Oil Terminal, an oil storage depot located on the north-east of village of Kingsbury in Warwickshire, which is of key strategic importance in the UK. Details are set out in Davis 1, §§20-21 **[HB/162]**.

In relation to the relevant property interests pertaining to Site 2, the First Claimant is the freehold proprietor of an area of unregistered land, the registered proprietor of one freehold title, the registered proprietor of one leasehold title and also has a registered leasehold right of way over an accessway over adjoining land. Details are set out in Davis 1, §§29-33 **[HB/163]** and the Third Witness Statement of Peter Davis, dated 5 July 2023, §13 **[HB/219]**.

This private accessway on land adjoining Site 2 leading from the public highway to Site 2 is referred to as the “**Site 2 Access Route**”.

A plan for Site 2 and the Site 2 Access Route can be found at **[HB/12]**.

1. **The direct action**
2. In April 2022, a campaign of direct action was commenced against a wide range of sites related to the energy sector, as set out in paragraph 46 of the First Witness Statement of John Armstrong, dated 7 April 2022 (“**Armstrong 1**”) **[HB/176]**. This included direct targeting of the Sites. The details of the campaigns are set out in Armstrong 1, §§43-48 **[HB/174]**.
3. By way of example, as set out at Armstrong 1, §44 **[HB/175]:**
   * 1. On 1 April 2022, ‘Just Stop Oil’ activists climbed on top of an oil tanker at the entrance to Site 1, with other individuals sitting on the road in front of the oil tanker. 27 people were arrested.
     2. On 3 April 2022, around 33 individuals were at Site 1 and blocked the entrance to the depot. 14 people were arrested. In addition, supporters of Just Stop Oil cut through a fence to access Oil Road on Site 1 as well as climbing on oil tankers at Oil Road.
     3. Later on 3 April 2022, more than 30 individuals camped outside Site 1 overnight. Some stood on fuel trucks with banners whilst others prevented tankers from leaving.
     4. On 4 April 2022, the direct action continued.
4. There had also been direct action affecting Site 2, as set out at Armstrong 1, §45 **[HB/176]**:
   * 1. On 1 April 2022, the entrances were blocked preventing oil tankers from leaving.
     2. On 3 April 2022, it was reported that 54 arrests were made at Site 2.
     3. On 5 April 2022, 20 activists from Just Stop Oil blocked the entrance to Site 2. Warwickshire Police indicated that it had arrested 8 people that day.
     4. On 7 April 2022, supporters of Just Stop Oil blocked the entrance to Site 2 and claimed that individuals were inside Kingsbury oil terminal (albeit not those parts that comprise part of Site 2).
5. As such, at the hearings before Peter Knox KC, there had been acts of trespass committed on Site 1 and, though there had not been acts of trespass committed on Site 2 at that stage, the Claimants had good reason to believe that there was a real and imminent risk of such action. It was on this basis that the First and Second Knox Orders were granted.
6. Armstrong 1 refers in detail, at §§46-49, to related incidents of direct action targeting other fuel terminals and associated energy infrastructure across the UK and statements of commitment by Extinction Rebellion to continue their campaign. He also sets out in detail, at §§18-42, 51 and 61, the significant risk of damage and/or injury to persons and property, including the trespassers themselves.
7. **Review hearing before Rajah J**
8. The review hearing took place on 20 April 2023. Although there had been no direct action at the Sites themselves since the Second Knox Order, the Third Witness Statement of John Armstrong, dated 5 April 2023 (“**Armstrong 3**”), §§23-52, set out the significant continuing threat posed by the Defendants **[HB/206]**.
9. In the course of the hearing,[[8]](#footnote-9) Rajah J considered the fact that there had been no further acts of trespass and no further acts of interference since the injunctions were granted **(see [HB/370G-H])** but accepted that there nevertheless continued to be a real risk of further acts of trespass and nuisance having regard to the evidence as a whole, which included: the direct action that had already taken place at the Sites and at other oil terminals in 2022; the evidence of subsequent direct action targeting the oil industry and other oil infrastructure (**see [HB/373C-D]**); and, the continued statements by environmental protestors to carry on with their direct action campaign aimed at the energy sector. In his view, the implication was that there was a risk that direct action aimed at those in the Claimants’ position would escalate or resume but for the injunctions.
10. **Other injunctions granted to energy sector**
11. There have been a number of interim and final injunctions granted in relation to direct action threatened by environmental protestors. These are set out in Armstrong 4, §§45-46 **[HB/227]**, and Armstrong 5, §38 **[HB/242]**.
12. Most recently:
    1. A final injunction was granted to Esso Petroleum Company Ltd on 19 July 2023 by Linden J: *Esso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB) (“***Esso Petroleum****”)* **[AB/450]**.
    2. An interim injunction was granted to North Warwickshire BC on 14 July 2023 by Sweeting J: *North Warwickshire BC v Persons Unknown* [2023] EWHC 1719 (KB). Sweeting J found that the Council was “*likely*” to obtain injunctive relief at trial, pursuant to s.12(3) HRA 1998: §§119, 125. **[AB/438-439]**.
    3. Final injunctions were granted to TfL on 23 May 2023 and 3 May 2023 in respect of Just Stop Oil and Insulate Britain, respectively: *Transport for London v Lee* [2023] EWHC 1201 (KB) (Eyre J) **[AB/403]** and *Transport for London v Persons Unknown* [2023] EWHC 1038 (KB) (Morris J) **[AB/388]**.
13. **CONTINUED THREAT**
14. It is the Claimants’ position that there exists a continued threat of trespass and nuisance at the Sites.
15. This is on the basis of:
    * 1. The direct action that occurred in and around the Sites in April 2022: Armstrong 1, §§44-45 **[HB/175]**; the Second Witness Statement of John Armstrong, dated 14 April 2022, §§12-17 **[HB/195]**.
      2. Since the Knox Orders, the further incidents of direct action and protest in close proximity to Site 2: Armstrong 3, §§11-19 **[HB/204]**.
      3. The ongoing direct action carried out by organisations such as Extinction Rebellion and Just Stop Oil aimed at the energy sector more generally: Armstrong 3, §§23-44 **[HB/206]**; Armstrong 4, §§16-36 **[HB/223]**; Armstrong 5, §§17-26 **[HB/238]**.
      4. The continued statements, particularly in relation to Just Stop Oil, that they will be continuing with their campaign of direct action and are continuing to actively recruit new members: Armstrong 4, §§37-44 **[HB/226]**; Armstrong 5, §§27-37 **[HB/241]** – see, e.g.:
         + “*Our supporters will be returning – today – tomorrow – and the next day – and the next day after that – and every day until our demand is met – no new oil and gas in the UK…”* (October 2022). **[EB2/399]**
         + *"It's time to get off the sidelines and join in civil resistance to end new oil, gas and coal"* (July 2023): Armstrong 5, §33 **[HB/242]**.
16. Although the amount of direct action has decreased in intensity since April 2022, and the Sites themselves have not been directly targeted, this is likely for the reasons set out in Armstrong 4, §12 **[HB/222]** – i.e. it is the very existence of injunctions which are likely having this effect. See e.g. tweet from JSO dated June 2023 (and retweeted by Extinction Rebellion) which refers specifically to the injunctions having that deterrent effect: Armstrong 4, §12(b).
17. **GENERAL PRINCIPLES**
18. **Final Injunctions**
19. The jurisdiction to grant both interim and final injunctions is founded in s.37 of the Senior Courts Act 1981 which confers power on the High Court to grant such injunctions *“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”*.
20. There is no jurisdictional impediment to the grant of a final injunction against persons unknown: *London Borough of Barking and Dagenham v Persons Unknown* [2023] QB 295, §§93-96 **[AB/245]**. Judgment is awaited in respect of an appeal to the Supreme Court (now *Wolverhampton CC v London Gypsies and Travellers*) but the present law is as stated by the Court of Appeal.[[9]](#footnote-10)
21. **Summary Judgment**
22. The general principles applicable to a summary judgment application were set out by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), §15 **[AB/9]**, and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098; [2010] Lloyd’s Rep IR 301, §24 (Etherton LJ). In summary:
    * 1. The Court must consider whether the applicant has a “*realistic”* as opposed to “*fanciful”* prospect of success.
      2. A “*realistic”* claim is one that carries some degree of conviction and is more than merely arguable.
      3. In reaching its conclusion, the Court must not conduct a mini-trial. But this does not mean that the court must take at face value and without analysis everything that an applicant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
      4. The court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.
      5. If there is a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.
23. Principles (d) and (e) call into play the following statement of Cockerill J in *King v Stiefel* [2022] 1 All ER (Comm) 990 **[AB/106]** (cited in the *White Book* at §24.2.3):

“21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the court will be entitled to draw a line and say that even bearing well in mind all of those points it would be contrary to principle for a case to proceed to trial.

22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up...”

1. The overall burden of proof is on the applicant but if an applicant adduces credible evidence in support of the application, the respondent then comes under an evidential burden to prove some real prospect of success or other reason for having a trial: *Sainsbury’s Supermarkets Ltd v Condek Holdings Ltd* [2014] EWHC 2016, §13 (Stuart-Smith J) **[AB/21]**.
2. The test for summary judgment is no different where an applicant is seeking a final anticipatory injunction in the context of protest: *National Highways Ltd v Persons Unknown* [2023] 1 WLR 2088 (“***National Highways****”)*, §40 **[AB/369]**. The fact that such defendants have served no defence or evidence or otherwise engaged with the proceedings is of considerable relevance when applying the summary judgment test as it indicates the absence of any arguable defence: *National Highways*, §§40-41.
3. **GROUNDS FOR THE APPLICATION**
4. The Claimants must be able to show that the Defendants have no realistic prospect of successfully defending the claim in relation to the following criteria:
5. Whether there is a specific cause of action.
6. As the claim is brought against persons unknown, whether the criteria in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, §82 **[AB/78]**, are satisfied insofar as they apply to a final injunction.
7. Whether there is any interference with the Article 10 and 11 ECHR rights of the Defendants and, if so, if it is justified.
8. Whether the service requirements have been satisfied.
9. When considering each of these criteria, it is important to note that the Defendants have served no defence or evidence or otherwise engaged with the proceedings. This is of considerable relevance as it indicates the absence of any arguable defence: *National Highways*, §§40-41 **[AB/369]**.
10. **Cause of action**
11. The Claimants rely on trespass in relation to their own land. The Defendants entering and remaining on the Claimants’ land without their consent is a clear trespass.
12. The Claimants also rely on private nuisance where that amounts to any continuous activity or state of affairs causing a substantial and unreasonable interference with a claimant’s land or use or enjoyment of land: *HS2 Ltd v Persons Unknown* [2022] EWHC 2360 (KB), §§85-87 (Knowles J) **[AB/300]**. The Defendants preventing the Claimants entering their own land from the highway or preventing them from using the Site 1 Access Route or the Site 2 Access Route amount to a private nuisance.
13. ***Canada Goose* criteria**
14. Although the *Canada Goose* criteria were formulated in the context of interim relief, there is no relevant jurisdictional difference between an interim and final injunction, as set out above: *Barking & Dagenham LBC v Persons Unknown* [2023] QB 295, §93 **[AB/245]**.
15. Those criteria contained at §82 of *Canada Goose* that are relevant for final relief are satisfied in the following ways:
    1. *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.*
16. It is impossible to name the persons who are likely to commit the tort unless restrained.
17. As found by Peter Knox KC and Rajah J, it has been possible to give effective notice of the proceedings to the Defendants by the alternative methods of service contained in the First Knox Order, §13 **[HB/97]**.
18. *The “persons unknown” must be defined in the originating process by reference to their conduct which is alleged to be unlawful.*
19. Persons Unknown are defined by reference to their unlawful trespass and nuisance.
20. *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.*
21. This requirement also applies to final injunctions: *Transport for London v Lee* [2023] EWHC 1201 (KB), §20 (Eyre J) **[AB/393]**.
22. In *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch) (“***Vastint***”), Marcus Smith J set out the test as whether: (a) there is a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights; and (b) if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an injunction to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.
23. Linden J in *Esso Petroleum* said the following about the *Vastint* formulation **[AB/462]**:

“63. With respect, I confess to some doubts about whether the two questions which he 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. I also note that, even taking into account Vastint, the editors of Gee on Commercial Injunctions (7th Edition) say 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.”

64. Where the court is being asked to grant an injunction in circumstances where no tort has been committed or completed it will naturally need to be persuaded that the risks and consequences of not making such an order are sufficiently compelling to grant relief. Where, as in the present case, tortious conduct has taken place but the identity of the tortfeasors is unknown, and relief is sought on a final basis against future tortfeasors who are not a parties and are identified only by description, again the court will be cautious. But it would be surprising if, for example, a court which considered that there was a significant risk of further tortious conduct, but not a strong probability of such conduct, was compelled to refuse the injunction no matter how serious the damage if that conduct then took place.

65. However, Marcus Smith J analysed the authorities carefully, successive cases have adopted his test and the matter was hardly argued before me. I therefore do not propose to depart from what he said. Nor do I need to. Bennathan J was satisfied that the Vastint test was satisfied in this case, and so am I in the light of the evidence before me: I am also satisfied that, having regard to the risks in the event that relief is refused, it is just and convenient to grant relief.”

1. Whichever position is adopted, the test is satisfied in this case for the following reasons:
   * 1. The evidence, taken as a whole, points to there continuing to be a significant risk of further tortious conduct which justifies ongoing injunctive relief.
     2. **§§23-24 above** are repeated. The reason why there has been no direct action on the Sites since April 2022 is likely due to the deterrent effect of the injunctions: Armstrong 4, §12 **[HB/222]**. As Linden J put it in *Esso Petroleum* at §67 **[AB/463]**, *“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.”*
     3. Further, as Linden J stated in *Esso Petroleum*, it would have been very easy for Extinction Rebellion or Just Stop Oil to give assurances or evidence to the Court that there was no intention to carry out direct action at the Sites but they did not do so: §67. The untested evidence from the Claimants is that they intend to continue to challenge the energy sector vigorously, including with direct action. Having adduced this credible evidence, the Defendants have failed to satisfy their own evidential burden to prove some real prospect of success or other reason for having a trial: *Sainsbury’s Supermarkets Ltd v Condek Holdings Ltd* [2014] EWHC 2016, §13 (Stuart-Smith J) **[AB/21]**.
     4. The harm that would ensue if an injunction were refused is potentially very grave. The direct action poses significant health and safety risks, in particular in respect of personal injury to the Defendants and others at the Sites: see Armstrong 1, §§18-42 **[HB/170]**; and, *Esso Petroleum*, §§48-53 **[AB/459]**, for the sort of risks that exist at sites such as these. These can be very dangerous sites for those who have not received appropriate training. The likelihood of direct action occurring – considered below – must be viewed through the lens of this potentially grave harm and, having regard to those risks, it is just and convenient to grant relief.
     5. There has been ample scope for those potentially affected by the Orders made throughout these proceedings and by the Order sought in this application to raise challenges, as has occurred in other cases, even if they are not joined as named parties: see. e.g. CPR r.40.9. Notwithstanding this, the Defendants have failed to serve a defence or otherwise engage with the proceedings. This is of considerable relevance when applying this test as it indicates the absence of any arguable defence: *National Highways*, §§40-41 **[AB/369]**.
     6. It is also relevant that: (1) on each of the three occasions this claim has come before the Court in these proceedings, the Judges have found that the Claimants were likely to succeed at trial based on the evidence before them; and, (2) Judges in other similar recent cases brought by those in the energy sector have considered there to be a sufficiently real and imminent risk of direct action by environmental protestors to justify maintaining the injunctive relief.
2. *The defendants 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.*
3. **§§37-38 above** are repeated. The alternative methods of service are set out in the draft Order **[HB/46]**.
4. *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.*
5. The terms of the injunction correspond with the threatened torts and are not so wide as to prohibit lawful conduct. There have already been acts of trespass and nuisance and these are the threatened activities. As with the previous orders in these proceedings, the draft Order does not seek to go beyond what is currently apprehended.
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.*
7. The terms of the injunction are sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The draft Order is specific and comprehensible in identifying the forbidden activities.
8. *The interim injunction should have clear geographical and temporal limits.*
9. This requirement also applies to final injunctions: *Esso Petroleum*, §71(f) **[AB/464]**.
10. The injunction has clear geographical and temporal limits. The plans and the descriptions of the Sites and Site Access Routes are sufficiently clear.
11. In relation to the temporal limit, the Claimants propose that the final injunction lasts for 5 years with provision for an annual review. This is the same approach that has been adopted recently in *Esso Petroleum* (18 July 2023), §71(f) **[AB/464]**; *TfL v Persons Unknown* [2023] EWHC 1038 (KB) (3 May 2023), §52 **[AB/384]**; and, TfL *v Lee* [2023] EWHC 1201 (KB) (26 May 2023), §57 **[AB/403]**.
12. In the event the Supreme Court decision in *Wolverhampton CC v London Gypsies and Travellers* (heard in February 2023) has a material effect on any final injunction granted in this case, the Claimants will be under a duty to tell the Court and/or Defendants of the change: *Enfield LBC v Persons Unknown* [2020] EWHC 2717 (KB), §§27-32 (Nicklin J) **[AB/91]**.
13. **ECHR rights**
14. The injunction sought by the Claimant relates to private land only. As such, the Article 10 and 11 ECHR rights of the Defendant provide no defence as those provisions do not provide a right to enter onto private land: *DPP v Cuciurean* [2022] EWHC 736 (Admin), §§45 and 76-77 **[AB/272, 278]**; *Ineos Upstream v Persons Unknown* [2019] 4 WLR 100 (CA), §36 (Longmore LJ) **[AB/54]**.
15. **Service**
16. The service requirements have been satisfied for the reasons set out at **§§8-11 above**.
17. **CONCLUSION**
18. The Court is therefore respectfully requested to grant a final order in the terms of the draft Order.

**MYRIAM STACEY KC YAASER VANDERMAN**

**Landmark Chambers**

29 September 2023

1. Section 12(3) Human Rights Act 1998 serves to elevate the usual *American Cyanamid* test of whether there is a “*serious issue to be tried”* to whether the applicant is “*likely”* to succeed at trial. It applies only to “*publication”* but on each occasion the Judge applied the test as if it related to the direct action relevant to this claim. [↑](#footnote-ref-2)
2. *Esso Petroleum Company Ltd v Persons Unknown* [2023] EWHC 1837 (KB), §71(f) **[AB/464]**; *TfL v Persons Unknown* [2023] EWHC 1038 (KB), §52 **[AB/384]**; and, *TfL v Lee* [2023] EWHC 1201 (KB), §57 **[AB/403]**. [↑](#footnote-ref-3)
3. CPR 24.4(1) provides that a claimant may not apply for summary judgment until the defendant has filed an acknowledgement of service or defence unless the court gives permission. [↑](#footnote-ref-4)
4. Phillips 1 incorrectly states that the email was sent to [juststopoil@protonmail.co.uk](mailto:juststopoil@protonmail.co.uk) instead of [info@juststopoil.org](mailto:info@juststopoil.org). In fact, as demonstrated by the email itself **[HB/344]**, the email was sent to [info@juststopoil.org](mailto:info@juststopoil.org). [↑](#footnote-ref-5)
5. Phillips 1 incorrectly states that the email was sent to [juststopoil@protonmail.co.uk](mailto:juststopoil@protonmail.co.uk) instead of [info@juststopoil.org](mailto:info@juststopoil.org). In fact, as demonstrated by the email itself **[HB/353]**, the email was sent to [info@juststopoil.org](mailto:info@juststopoil.org). [↑](#footnote-ref-6)
6. This provision, where it applies, requires the Court to be satisfied that “*the applicant has taken all practicable steps to notify the respondent*” if the respondent is neither present nor represented. [↑](#footnote-ref-7)
7. This provision requires the respondent to be given at least 14 days’ notice of the date fixed for hearing and the issues which it is proposed the court will decide. [↑](#footnote-ref-8)
8. The transcript of the hearing can be found at **[HB/355]**. There is currently no transcript of the judgment available but the Claimants’ note of the judgment is available if that would assist the Court. [↑](#footnote-ref-9)
9. See comments of Linden J in July 2023 to the same effect in *Esso Petroleum* at §§54-55 **[AB/460]**. [↑](#footnote-ref-10)