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

In the matter of a review of the final injunction granted by Mr Simon Gleeson (sitting as a Judge of the Chancery Division) on 6 October 2023

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 AN INJUNCTION REVIEW HEARING

DATE OF HEARING: 20 NOVEMBER 2024

TIME ESTIMATE FOR READING: 1HR

SUGGESTED ESSENTIAL PRE-READING:

- ORDER OF MR SIMON GLEESON, DATED 6 OCTOBER 2023 **[HB/13/120]**
- DRAFT ORDER **[HB/7/40]**
- SIXTH WITNESS STATEMENT OF JOHN ARMSTRONG, DATED 4 NOVEMBER 2024 **[HB/27/221]**
- SECOND WITNESS STATEMENT OF ANTONY PHILLIPS, DATED 23 NOVEMBER 2023 **[HB/26/217]**
- THIRD WITNESS STATEMENT OF ANTONY PHILLIPS, DATED 11 NOVEMBER 2024 **[HB/28/238]**

REFERENCES TO THE MAIN HEARING BUNDLE ARE IN THE FORM "**[HB/X]"**.

REFERENCES TO THE FOUR EXHIBIT BUNDLES ARE IN THE FORM "**[EB1/X]**", **[EB2/X]**", "**[EB3/X]**" AND "**[EB4/X]**".

REFERENCES TO THE AUTHORITIES BUNDLE ARE IN THE FORM "**[AB/X]**".

A. INTRODUCTION

1. This is a review hearing in respect of a final injunction granted for 5 years by Mr Simon Gleeson (sitting as a Judge of the Chancery Division) on 6 October 2023 (the "**Gleeson Order**") following an application for summary judgment. The Gleeson Order provided for an annual review of the injunction granted therein and this is the first such hearing. It was preceded by a number of interim injunctions made by Mr Peter Knox KC (sitting as a Deputy High Court Judge) on 12 April 2022 **[HB/9/56]** and on 21 April 2022 **[HB/11/87]**,

and Mr Justice Rajah on 21 April 2023 **[HB/12/104]**.

2. As well as the evidence relied upon to date, the Claimants also rely upon: the Sixth Witness Statement of John Armstrong, dated 4 November 2024 ("**Armstrong 6**"), which provides the Court with the most up-to-date position; the Second Witness Statement of Antony Phillips, dated 23 November 2023 ("**Phillips 2**"), which deals with service of the Gleeson Order; and, the Third Witness Statement of Antony Phillips, dated 11 November 2024 ("**Phillips 3**"), which deals with service of the notice of this review hearing and the documents relied upon.

3. No person has ever provided an acknowledgement of service, admission or defence as part of this claim. Indeed, to date, there has been no engagement by anyone served or notified of the proceedings.

4. In light of the continuing threat posed by the Defendants, the Claimants' position is that there has been no relevant change in circumstances since the making of the Gleeson Order. The Defendants have not disclaimed any intention to carry out direct action at the Claimants' sites. Indeed, the evidence demonstrates that the Defendants continue to target land and sectors that are connected to the energy industry, and which are not protected by injunctions. In these circumstances, the Claimants request the Court to make no order as to the continuing effect of the Gleeson Order. The Claimants also request an amendment to the service requirements, which is dealt with in greater detail below.

5. The Court has been provided with four exhibit bundles. The first three exhibit bundles are the exhibit bundles that were before Mr Simon Gleeson. The fourth exhibit bundle contains the new material relied upon for this review hearing. The Court will likely only/mostly need to refer to this fourth exhibit bundle.

B. SERVICE[1]

6. Phillips 2, §§6-14, confirms that the Gleeson Order was served according to the alternative methods set out at paragraph 6 of the Gleeson Order **[HB/26/218]**.

7. Phillips 3, §§8-20, confirms that the following documents were served according to the

[1] The Claimants still adopt the terminology of "service" for convenience even though the Supreme Court has authoritatively ruled that claims against Persons Unknown (newcomers) are, by definition, without notice and such Persons cannot technically be "served": Wolverhampton CC v London Gypsies & Travellers [2024] 2 WLR 45, §§132, 139, 142, 167(ii), 176-177 and 226 **[AB/8/120]**.

alternative methods set out at paragraph 9 of the Gleeson Order: the Notice of Hearing for this review hearing; the application notice filed in respect of this review hearing; and, Armstrong 6 (together with exhibits) **[HB/28/239]**.

8. Consequently, the service requirements set out in the Gleeson Order have been complied with. To the extent that the requirements in s.12(2) Human Rights Act 1998 apply **[AB/2/7]**, they have also thereby been satisfied.

C. TEST TO BE APPLIED AT A REVIEW HEARING

9. The relevant test to be applied at review hearings such as the present is whether anything material has changed since the previous order was granted. As Ritchie J set out in HS2 v Persons Unknown [2024] EWHC 1277 (KB) **[AB/9/204]**:[2]

> "32. Drawing these authorities together, on a review of an interim injunction against PUs and named Defendants, this Court is not starting de novo. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the quia timet, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
>
> 33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply." (emphasis added)

10. Similarly, in Arla Foods v Persons Unknown [2024] EWHC 1952, when granting a 5-year injunction with annual reviews in relation to animal rights' protestors, Jonathan Hilliard KC (sitting as a Deputy Judge of the High Court) observed the following **[AB/10/248]**:

> "128… The annual review will allow a continued assessment of whether circumstances have changed so as make the continuation of the injunction appropriate and the five year maximum adds an appropriate end-point. In my judgment, it would not be appropriate to require the Claimants to incur the costs of applying each year for a new or renewed injunction. Rather the review should be of whether the position has developed since the last review."

[2] Adopted in Thurrock Council v Adams [2024] EWHC 2576, §30 (Julian Knowles J) **[AB/13/312]**.

11. That said, a review is not a "*rubber stamp"*: Exolum Pipeline Systems Ltd v Persons Unknown [2024] EWHC 1015, §28 (Farbey J) **[AB/7/118]**.

12. Since the last hearing and the grant of the Gleeson Order, the Supreme Court has delivered judgment in Wolverhampton CC v London Gypsies & Travellers [2024] 2 WLR 45 ("**Wolverhampton CC**") **[AB/8/120]**. Whilst Wolverhampton CC has not materially changed the legal tests to be applied in a protest context, the Claimants accept that the questions to be asked have been reformulated. These have been summarised in protest cases such as Valero Energy Ltd v Persons Unknown [2024] EWHC 134 ("**Valero**"), §58, where Ritchie J set out 15 questions to be asked (albeit in the context of a summary judgment application) **[AB/6/104]**. For completeness, these 15 questions are briefly considered below in order to demonstrate that the judgment in Wolverhampton CC has not affected the basis upon which the Gleeson Order was granted.

D. BACKGROUND

(i) The Sites

13. This application relates to two sites (the "**Sites**"):

    a. Site 1: the West London Buncefield Oil Terminal is 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/16/142]**. Davis 1, §19, refers to the fact that the primary activities undertaken on Site 1 are: (a) the storage of aviation kerosene for onwards transmission to Heathrow and Gatwick airports; (b) the transfer of fuel products to neighbouring terminals; (c) road-loading of aviation kerosene; and (d) storage of 'interface' material (a mixture of fuels) created as part of the Pipeline operation. The title interests are set out in Davis 1, §§24-28 **[HB/16/143]**. The 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/13/129].**

    b. Site 2: the Kingsbury Oil Terminal is located in the north-east of the village of Kingsbury in Warwickshire. Details are set out in Davis 1, §§20-21

[HB/16/142]. Davis 1, §35, refers to the fact that the primary activities undertaken on Site 2 are: (a) the transfer of fuel to neighbouring terminals from pipeline system systems and the storage of pipeline interface material; (b) the transfer of fuel from neighbouring terminals to the pipeline systems for onward transportation; and (c) acting as the central control centre for the monitoring and control of the Claimants' pipeline and storage networks. The title interests are set out in Davis 1, §§29-33 **[HB/16/143]** and the Third Witness Statement of Peter Davis, dated 5 July 2023, §13 **[HB/23/195]**. The 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/13/131]**.

(ii) The direct action

14. The widespread direct action that occurred against energy companies in April 2022 is well-known: see paragraph 46 of the First Witness Statement of John Armstrong, dated 7 April 2022 ("**Armstrong 1**"). This included direct targeting of Site 1 as well as good reason to believe Site 2 was also at real and imminent risk of such action. The details of the campaigns are set out in Armstrong 1, §§43-48 **[HB/17/154]**.

15. 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 **[HB/17/156]**. 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 **[HB/17/150 and 159]**.

16. The Claimants now rely on Armstrong 6, §§20-62, to demonstrate the continuing threat of direct action and this is considered further below **[HB/27/224]**.

(iii) Other injunctions granted to energy sector

17. There have been a number of interim and final injunctions granted in relation to direct action threatened by environmental protestors, as well as subsequent reviews of those injunctions. These are set out in Armstrong 6, §59(a) **[HB/27/231]**.

18. Most recently:

(1) A final injunction was granted to North Warwickshire BC on 6 September 2024 by HHJ Emma Kelly (sitting as a Judge of the High Court): North Warwickshire BC v Persons Unknown [2024] EWHC 2254 (KB). The injunction was granted for 3 years (noting that the interim injunction had already been in force for over 2 years): §98 **[AB/12/294]**.

(2) A final injunction lasting 5 years was granted to Esso Petroleum Company Ltd on 10 July 2023 by Linden J: Esso Petroleum Company Ltd v Persons Unknown [2023] EWHC 1837 (KB) ("***Esso Petroleum***") **[AB/5/59]**. It was subsequently reviewed on 10 July 2024 by Tipples J.

(3) A final injunction lasting 5 years was granted in the Valero case, sealed on 26 January 2024, by Ritchie J **[AB/6/75]**.

E. CONTINUED THREAT

19. It is the Claimants' position that there exists a continued threat of trespass and nuisance at the Sites.

20. This is on the basis of:

a. The direct action that occurred in and around the Sites in April 2022: Armstrong 1, §§44-45 **[HB/17/155]**; the Second Witness Statement of John Armstrong, dated 14 April 2022, §§12-17 **[HB/19/172]**.

b. Since the grant of interim injunctions protecting the Sites in April 2022, the further incidents of direct action and protest in close proximity to Site 2: Armstrong 3, §§11-19 **[HB/21/181]**.

c. The ongoing direct action carried out by organisations such as Extinction Rebellion and Just Stop Oil aimed at the energy sector more generally: Armstrong 6, §§20-47 **[HB/27/224]**.

d. The continued statements, particularly in relation to Just Stop Oil, that they will be continuing with their campaign of direct action: Armstrong 6, §§48-58 **[HB/27/228]**.

e. The airports campaign organised by Just Stop Oil to disrupt airports across the country in summer 2024. In a press-release, dated 3 March 2024, Just Stop Oil

announced that "*in addition to disrupting high-profile cultural events and continuing our Stop Tory Oil campaign Just Stop Oil will commence a campaign of high-level actions at sites of key importance to the fossil fuel industry – airports"*: Armstrong 6, §55(b) **[HB/27/229]**. This led to many of the largest airports obtaining injunctions to prevent such direct action.

21. 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 6, §62 **[HB/27/234]** – i.e. it is the very existence of injunctions which are likely having this effect. See e.g. tweets from JSO dated June 2023 (and retweeted by Extinction Rebellion) and September 2023 which refer specifically to the injunctions having that deterrent effect.

22. The Claimants emphasise the point that the harm that would ensue if the Gleeson Order were discharged 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/17/150]**; and, *Esso Petroleum*, §§48-53 **[AB/5/68]**, 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.

F. SUBMISSIONS ON REVIEW

23. These submissions are split into two parts: (i) to demonstrate that nothing material has changed since the Gleeson Order; and, (ii) to confirm, by reference to the Valero criteria, that the judgment in Wolverhampton CC has not materially affected the basis upon which the Gleeson Order was made.

(i) No material change

24. Nothing material has changed since the Gleeson Order. There continues to be a threat of direct action at the Sites for the reasons set out above.

25. Importantly, neither Just Stop Oil nor Extinction Rebellion have disclaimed any intent to carry out direct action at the Sites. It is a highly relevant factor that, although it would have been very easy for them to have given assurances or evidence that there was no longer any intention to carry out direct action at the Sites, they have failed to do so: Esso Petroleum,

§67 (Linden J) **[AB/5/72]**.

26. As far as the Claimant is aware, no injunction originally granted to an energy company in or around April 2022 (in respect of the campaign that took place at that time) has been discharged on the basis of the Court finding that the level of threat has diminished.

27. Although direct action at the Sites and at the sites of energy companies has ceased since April 2022, this is due to the presence of a blanket of injunctions. As Linden J stated in Esso Petroleum, §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."* **[AB/5/72]**

28. In terms of potentially material changes to the law, a number of cases have recently considered the Public Order Act 2023 and whether the creation of further criminal offences (e.g. locking on (s.1), tunnelling (s.3) and interference with key national infrastructure (s.7)) has diminished the threat of direct action **[AB/3/8]**. It is submitted that the Public Order Act 2023 does not materially alter the position or diminish the threat in this case as:

    a. The criminal offences can only potentially address the position *after* the damage or harm has occurred and (for the reasons set out below) will not deal with the prevention of future conduct. The maximum sentence for the offences under sections 1, 2 or 7 is no more than 12 months (in some cases just a fine), whereas the maximum penalty for contempt for breach of a civil injunction 2 years.

    b. Aggravated trespass was already a criminal offence at the time of the original direct action, with a maximum sentence of 3 months: Criminal Justice and Public Order Act 1994, s.68(3) **[AB/1/3]**. The existence of that offence did not deter the direct action.

    c. Although they were not referred to, the relevant provisions of the Public Order Act 2023 were also already in force at the time of the Gleeson Order and the Judge considered that the threat was such as to grant final injunctive relief.

    d. Notwithstanding the Public Order Act 2023 and s.68(3) of the Criminal Justice and Public Order Act 1994, Just Stop Oil conspired, widely publicised and intended to carry out widespread direct action, which included criminal

damage, at airports this summer: Armstrong 6, §§35, 55(b) and (d) **[HB/27/226 and 229]**. Such conduct would likely have been a criminal offence contrary to, e.g., s.7 of the Public Order Act 2023 **[AB/2/19]**. As such, it cannot be safely assumed that the existence of these offences will guarantee continued compliance with the Gleeson Order.

e. This is essentially what Judges in a number of recent cases have found: see Drax Power Ltd v Persons Unknown [2024] EWHC 2224 (25 Jul 2024), §§24 and 28 (Ritchie J) **[AB/11/260]**; and, North Warwickshire BC v Persons Unknown [2024] EWHC 2254 (6 Sep 2024), §88 (HHJ Emma Kelly) **[AB/12/290]**. See also HS2 v Persons Unknown [2024] EWHC 1277 (24 May 2024) where, although Ritchie discharged the injunction in respect of that part of the HS2 project that had been abandoned by the Government (§39) **[AB/9/210]**, the rest of the injunction was maintained.

(ii) Wolverhampton CC

29. Wolverhampton CC also does not represent a material change in the law. For the avoidance of doubt, the Claimants submit that the 15 Valero requirements were satisfied at the time of the hearing before Mr Simon Gleeson and continue to be satisfied for the following reasons:

(1) A civil cause of action was identified: trespass and nuisance.

(2) The Claimants have complied (and will continue to comply) with their duty of full and frank disclosure.

(3) There was sufficient evidence to prove the claim. This was proved to the Judge's satisfaction at the hearing of the Claimants' summary judgment application. The evidence of threat since then has not affected this assessment.

(4) There was, and continues to be, no defence which has a realistic prospect of success.

(5) There was, and continues to be, a compelling justification for the injunction to protect the Claimants' civil rights. This is in large part due to the significant health and safety risks posed by trespassing on the Sites. This is in contrast to

the lack of justification for the apprehended unlawful conduct.

(6) The Court was not, and is still not, required to conduct an ECHR balancing exercise, pursuant to Articles 10 and 11 ECHR, as they do not include a right to trespass on private property and thereby override the rights of private landowners: DPP v Cuciurean [2022] 3 WLR 446 (DC), §§40–50 **[AB/4/49]**.

(7) Damages would not have been an adequate remedy. This is due, in particular, to the health and safety risks posed by the Defendants. In addition, the amount of disruption likely to be caused and the fact that there were no named defendants to seek damages from means that damages would not have been adequate: Valero, §70 **[AB/6/110]**. The threatened harm would also be "grave and irreparable" for these reasons.

(8) The Persons Unknown were clearly and plainly identified by reference to the tortious conduct prohibited.

(9) The prohibition in the Gleeson Order was set out in clear words and was not framed in legal technical terms. It does not prohibit any conduct which would be lawful viewed on its own.

(10) The prohibition in the Gleeson Order mirrored the torts claimed in the claim form.

(11) The prohibition in the Gleeson Order was defined by clear geographic boundaries.

(12) The Gleeson Order granted a 5-year injunction with an annual review. This mirrors other similar injunctions granted in relation to environmental protests: see, e.g., Valero, §75 **[AB/6/111]**; Esso Petroleum, §71(f) **[AB/4/73]**; and various injunctions referred to in Armstrong 6, §59(b) **[HB/27/232]**.

(13) Persons Unknown were notified of the claim documents, applications and orders through methods sanctioned by the Court.

(14) The Gleeson Order includes provision for any person to apply to set aside or vary the injunction on short notice.

(15) The Gleeson Order will be reviewed annually.

G. SUBMISSIONS ON AMENDING SERVICE REQUIREMENTS

30. The Claimants seek a minor amendment to the alternative service requirements that have previously been sought and granted.

31. In order to serve Persons Unknown, the Claimants previously applied, pursuant to CPR r.6.15 and r.6.27, to have all documents in the claim served by alternative methods. This involved a number of methods, including: (1) fixing the documents in containers at a number of locations around the Sites; (2) posting the documents on a website; (3) fixing large warning notices at locations around the Sites; and, (4) sending emails to certain email addresses with information on where the documents could be found.

32. The Claimants now seek to amend the requirement set out in (1) above so as:

    a. To dispense with any requirement in the previous orders granted in this claim by Mr Peter Knox KC and Rajah J for the Claimants to fix copies of documents in clear transparent sealed containers at the Sites; and,

    b. To the extent necessary, to amend paragraph 6(b) of the Gleeson Order so that the Claimants are permitted to affix copies of that Order at a minimum number of 2 prominent locations on the perimeter of each of the Sites, whether in clear transparent sealed containers or by any other method.

33. Importantly, the Court will note that, in respect of any future documents, paragraph 9 of the Gleeson Order no longer requires fixing copies of documents in sealed containers.

34. The reasons for this proposed amendment are set out in Armstrong 6, §§67-74 **[HB/27/235]**. In summary:

    a. The sealed containers are now stuffed with documents, meaning that they inaesthetic and their contents are difficult to navigate.

    b. The fact of the containers being kept outside all year round means that the condition of the boxes themselves as well as the documents inside has deteriorated.

c. The Claimants are incurring costs in replacing the sealed containers and their documents in light of their disintegration.

d. The documents can be easily accessed and read through other methods.

e. The parking of a car near the entrance of a Site in order for an individual to read the documents within the containers creates a potential hazard.

35. The Claimants maintain that the relevant documents, if notified using the other methods of alternative service, would still be likely to reach Persons Unknown: see CPR PD6A, para. 9.1(3).

H. CONCLUSION

36. The Court is therefore respectfully requested to grant an order in the terms of the draft Order.

MYRIAM STACEY KC
Landmark Chambers

YAASER VANDERMAN
Brick Court Chambers

14 November 2024