# ATTENDANCE NOTE

**High Court of Justice**

**Queen's Bench Division**

**Claim Nos. QB – 2022 – 001241 and QB – 2022 - 01259**

**Shell U.K. Limited v Persons Unknown (QB – 2022 – 001241)**

**Shell International Petroleum Company Limited v (1) Persons Unknown and (2) Mr Andrew Daniel Smith (QB – 2022 – 01259)**

**Hearing (Court 12 in the Royal Courts of Justice) before Mr Justice Bennathan on 28 April 2022, starting at 13:58.**

**ATTENDEES**

1) Mr Justice Bennathan (the "**Judge**")
2) Phil Earley – Court Associate
3) Myriam Stacey QC – Landmark Chambers, representing the Claimants in both actions ("**MSQC**")
4) Emma Pinkerton, Jerome Stedman, Anthea Adair and Sally Tang of CMS Cameron McKenna Nabarro Olswang LLP, the Claimants' Solicitors
5) Natasha McCarthy and Ben Stradling of the Claimants
6) Robbie Stern of Matrix Chambers, representing the Defendant ("**RS**")
7) Mr Andrew Daniel Smith ("**Mr Smith**")
8) Alice Hardy of Hodge Jones & Allen ("**HJA**", representing Ms Jessica Branch ("**Ms Branch**") and Mr Smith)

**AUTHORITIES REFERED TO**

1) *American Cyanamid Co (No 1) v Ethicon Ltd* [1975] UKHL 1 (05 February 1975) ("**American Cyanamid**")
2) *Canada Goose UK Retail Ltd v. Persons Unknown* [2020] 1 WLR 2802 ("**Canada Goose**")
3) *DPP v. Cuciurean* [2022] EWHC 736 (Admin) ("**Cuciurean**")
4) *DPP v. Ziegler and others* [2021] UKSC 23 ("**Ziegler**")
5) *Ineos Upstream v. Persons Unknown* [2017] EWHC 2945 (Ch) ("**Ineos**")
6) *Ineos Upstream v. Persons Unknown* [2019] 4 WLR 100 (CA) ("**Ineos CA**")
7) *National Highways Ltd v. PU* [2021] EWHC 3081 (QB) ("**National Highways**")
8) *Vastint Leeds BV v Persons unknown* [2018] EWHC 2456 (Ch) ("**Vastint**")

This is a note of a return date hearing in respect of the above claims which are separate but were heard together as they have been brought by companies within the wider "Shell" group of companies and involve similar issues. References in this note to the Claimants will be to both Shell International Petroleum Company Limited and Shell UK Limited whereas reference to the Claimant will be to either one of those companies as applicable.

References to "**Shell Haven**" will be to the property which is the subject of claim number QB – 2022 – 001241 and references to "**Shell Centre Tower**" will be to the property which is the subject of claim number QB – 2022 – 001259.

The claims numbered above will be referred to together in this note as the "**Claims**".

**Hearing commenced at 13:58**

## 1. INTRODUCTION

1.1 MSQC stated that she was appearing for both Claimants in the actions and that this matter concerned two return hearing date applications pursuant to interim injunction orders dated 14 and 15 April 2022.

1.2 MSQC confirmed that RS appeared on behalf of Mr Smith and not Ms Branch.

1.3 MSQC stated that Mr Smith had prepared a witness statement and asked whether this had reached the Judge, to which he confirmed that it had. MSQC then dealt with housekeeping matters, confirming there were two main hearing bundles, two supplementary bundles and an additional documents bundle. The additional documents bundle was contained in a clip and consisted of blown-up overlay plans for both Shell Haven and Shell Centre Tower, which the Claimants thought might be helpful. MSQC confirmed that the order sought, in respect of Shell Haven, is only in respect of part of the title but that she would turn to that in due course.

1.4 RS confirmed he would be making an application to join Mr Smith as a party/Defendant to the proceedings.

## 2. JOINING OF MR SMITH TO THE SHELL CENTRE TOWER CLAIM

2.1 The Judge confirmed he believed he had read all of the relevant documents and that the first issue to decide was whether Mr Smith was to be joined as a named defendant.

2.2 MSQC confirmed her understanding that was the basis upon which RS was appearing and that there was no objection to that.

2.3 RS confirmed that was correct and that Mr Smith was to be added as a named defendant.

2.4 The Judge queried what the required formalities were.

2.5 MSQC confirmed that under the powers conferred on the Court, the Judge could make an order to join Mr Smith, by way of an informal application. The Judge confirmed that he would join Mr Smith as a named defendant.

2.6 The Judge then said that the issue of whether he should or should not have received RS's skeleton argument, initially on behalf of Ms Branch (a non-party), was now an academic argument. Further that the current injunction was not the only injunction of this nature where the Court has been asked to grant permission to hear submissions from non-parties. The Judge

confirmed he thought Ms Branch was represented by a Mr Townsend, of HJA, in another injunction heard recently. RS confirmed that to be the case.

2.7 The Judge confirmed that a few days ago he had sought the views of both parties (to the current claims) on the issue of whether or not he should hear from Ms Branch at the hearing. The Claimants' replies were that an application would be required pursuant to CPR 40.9 and that they do not consider Ms Branch to fall within the ambit of CPR 40.9 (i.e. as Ms Branch would not, as required under the Court rules, be someone who was "directly affected" by any judgement in the Claims). Ms Branch's Solicitors, HJA, had in response provided a long and helpful letter. RS confirmed this to be the case.

2.8 The Judge said he did not want to spend a great deal of time on this particular issue, now that any issues with respect to Ms Branch's standing had fallen away, but said it was the sort of issue that might rear its head again. On that basis the Judge asked to hear short, concise views from Counsel as to what they say on the matter. The Judge said he was minded to express a tentative view that will not bind himself or other Judges but that the point was an important one.

2.9 MSQC agreed that it was an important point of principle.

2.10 The Judge then said he could see the argument that in a normal injunction case it would be fairly simple to apply the test of whether someone was "directly affected" as required by CPR 40.9 but the chances are that in a case where the defendants are largely unknown, there is an argument that the Judge should be more generous in allowing representations particularly where convention rights (under the Human Rights Act 1998) are engaged.

2.11 MSQC said that one has to take a step back and start at the beginning. The starting point is CPR 40.9, which requires that the party making representations be "directly affected". The principal objection is that an application needs to be made on any analysis – Ms Branch has said she is not involved and has no intention of getting involved in the protests. In the absence of an application, MSQC submitted that yes it was open to the Judge to interpret the meaning of the words "directly affected" generously, but in this case Ms Branch has expressed the view that she has no particular interest in protesting. MSQC reminded the Judge that this was a private civil action and that it was difficult to see how it could be construed widely. MSQC further submitted that there is a floodgate argument in this case - the Claimants do not want to "shut people out", but equally cannot have innumerable parties appearing at a hearing making representations without first complying with the procedural rules.

2.12 RS submitted that the words "directly affected" should be interpreted generously because of the fundamental rights at stake and the fact that most defendants will not know they are defendants.

2.13 The Judge agreed that yes, the factual context is normally important.

## 3. SHELL HAVEN CLAIM

3.1 The Judge thanked both MSQC and RS for their submissions, asked that they turn to the matter of detail and confirmed that he had read Mr Stephen Brown's two witness statements.

3.2 MSQC clarified that Mr Brown's statement has been provided in relation to Shell Haven whereas Mr Keith Garwood's statement relates to the Shell Centre Tower.

3.3 The Judge queried whether there had been any protest at Shell Haven, specifically.

3.4 MSQC referred the Judge to paragraph 3, tab 6 of the Shell Haven hearing bundle which confirms that since 14 April there has been activity at Shell Haven. The Judge then referred to paragraph 3.2, tab 6, and noted the pledge in paragraph 3.5 to do what is "necessary". MSQC referred to paragraph 4.1, tab 6 which refers specifically to Shell.

3.5 The Judge confirmed that he was familiar with the background and queried whether there was merit in joining the two Claims. The Judge offered the view that it may be best to have two separate orders for each of the Claims.

3.6 MSQC confirmed that no formal application had been made to consolidate the Claims and that it was open for the Judge to entertain such an application. The two Claims involve connected entities, the evidence is very similar and it was MSQC's view that it would save Court time and would be easier for the Judge to consolidate.

3.7 RS asked if he could have a moment to take instructions. Having taken instructions, RS confirmed that Mr Smith's position was that he was content to be joined as a Defendant in respect of the Shell Centre Tower Claim only, as of course there are consequences to being named as the Defendant in terms of costs. For that reason, RS's submission on behalf of Mr Smith was to keep the Claims separate.

3.8 MSQC offered an alternative which was to continue on the basis of separate Claims but that they are twin tracked and heard together, without being expressly consolidated.

3.9 The Judge agreed this was a sensible suggestion.

3.10 The Judge then asked to have the draft injunction order in front of him so that the details could be considered.

3.11 There was then a discussion about the documents and locating the draft order. MSQC referred the Judge to the relevant overlay plan for Shell Haven in the additional documents bundle.

3.12 The Judge sought clarity as to whether there was a disclosure application, to which MSQC confirmed there were in respect of both Claims and that the orders had been approved by the police (being the Chief Constable of Essex for the Shell Haven Claim and the Commissioner of the Metropolitan Police Service for the Shell Centre Tower Claim), although they remain neutral and that the orders were included in the supplementary bundles.

3.13 Turning to the draft injunction order (tab 2 of the Shell Haven Claim hearing bundle), MSQC explained the plans and that the Claimant's title extends beyond the area sought in the plans attached to the draft order.

3.14 The Judge queried the significance of the plans and MSQC confirmed that the land shown is private (including the road). The Judge then asked whether the Claimant was seeking an order of land owned by the Claimant to which MSQC replied yes and that the Claimant owns adjoining land.

3.15 The Judge then returned to paragraph 2.2 of the draft order (which prohibits the blocking of "access to any entrance to Shell Haven") and explained his concern namely that as drafted, it lacked clarity and he wanted to make an order that protestors and police officers can understand. The Judge's preference was to use straightforward English as opposed to plans.

The Judge suggested amending those words to make it plain that paragraph 2.2 does not include roads leading to gateways but is itself confined to gateways only.

3.16 MSQC explained that she thought that the Judge's suggestion would go further than it needs to go as the Claimant owns the land. There is no restriction on lawful protest, the relief is sought in respect of private land. MSQC suggested instead that perhaps the entrances are identified as those marked blue on the plan annexed to the draft order.

3.17 The Judge accepted that the plans bring clarity but expressed concern that if anyone was reading a document on say a noticeboard, a few additional words at paragraph 2.2 of the draft order would make it plain that protesting on roads leading to Shell Haven is not restricted.

3.18 MSQC clarified that the protestors would not be entitled to block access to Shell Haven because it is private land.

3.19 The Judge queried how far back he would have to go in order to try and access Shell Haven i.e., at what point on a public road could you be said to be blocking access?

3.20 MSQC suggested 2 ways of dealing:

3.20.1 Change reference to "entrances" to "gateways"; or

3.20.2 Use the word "immediate" before entrances.

3.21 MSQC submitted that of the two options above, the latter is less desirable as it introduces subjectivity.

3.22 The Judge said that he was more attracted to the reference to gateways and that drafting is better done after the hearing so will consider the exact terms of the order after the hearing when a revised draft is provided.

3.23 MSQC said that because we are dealing with private land in this case the position may be slightly less complicated.

3.24 The Judge then asked RS for any observations.

3.25 RS said it was absolutely clear that the orders needed greater geographical clarity. RS submitted that it may be the case that the order is limited to private land but there is no way someone driving up the road would know where the order stops/starts. The same observation applies to the draft order in respect of the Shell Centre Tower.

3.26 The Judge said that, in respect of the Shell Centre Tower, the issue would be parked for now.

3.27 MSQC apologised for interrupting but pointed out that RS is instructed by Mr Smith and that Mr Smith is not a named defendant in respect of Shell Haven.

3.28 The Judge asked whether MSQC was interrupting on instruction – MSQC replied that it was on instruction and also principle. The Judge said that he had asked for RS input.

3.29 RS confirmed that the point applies mutatis mutandis.

## 4. THIRD PARTY DISCLOSURE APPLICATIONS (PURSUANT TO CPR 31) IN RESPECT OF SHELL HAVEN AND SHELL CENTRE TOWER

4.1 The Judge then queried whether hard copies of the disclosure orders (the "**Disclosure Orders**") for both Shell Haven and Shell Centre Tower had been located so that he could hear the argument on that principle.

4.2 MSQC said that the skeleton argument which she had submitted included protective wording for those individuals whose information had been shared.

4.3 MSQC explained the difference between the wording in the draft Disclosure Orders for both Shell Haven and Shell Centre Tower:

4.3.1 Shell Centre Tower – the Metropolitan Police Service wanted the obligation to disclose to be triggered by reference to a "breach" of the injunction order

4.3.2 Shell Haven – Essex Police wanted the obligation to disclose to be triggered by reference to arrest.

4.4 The Judge acknowledged that in dealing with the Disclosure Orders together we seemed to be moving between the two different sites (Shell Haven and Shell Centre Tower). The Judge also expressed concern that the Metropolitan Police Service formulation would seem to disclose to the Claimants details of people who had been arrested even though it was quite clear they would not be in breach of the injunction order.

4.5 MSQC acknowledged that the Metropolitan Police Service order did refer to arrests but given the nature of the injunction sought, it was not complicated in its terms and the Disclosure Orders are limited in that they talk about protests referred to in these proceedings.

4.6 The Judge asked whether RS was happy with the draft order.

4.7 RS submitted that there needs to be a strict test and expressed concern that the introduction of the word "reasonably" within the Disclosure Orders would be too wide.

4.8 The Judge suggested a break for 5 minutes and for the Disclosure Orders to be parked so that the Court could turn to the topic of the Shell Centre Tower Claim, as this is what RS was primarily concerned with.

**Adjourned at 14:48**

**Reconvened at 14:55**

## 5. SHELL CENTRE TOWER CLAIM

5.1 The Judge asked to look at the substance of the Shell Centre Tower Claim and the conduct that the Claimant sought to have banned.

5.2 MSQC explained the Shell Centre Tower is defined as the building that is outlined on the plan at page 14 of the relevant hearing bundle and referred the Judge to the ground floor plan at page 15 of the same bundle. MSQC then explained the ground floor layout, that the building fronts onto Belvedere Road and which fronts on to Jubilee Gardens. There was then a discussion about the geography, namely the location of the River Thames relative to the building, Jubilee Gardens and Belvedere Road.

5.3 MSQC highlighted that the Claimant's title extends significantly beyond what is stated in the draft injunction order. MSQC explained that entrances to the Shell Centre Tower were shown on the plan at page 15 of the relevant hearing bundle and that there are a number of accessways onto private land which was within the Claimant's title. The Judge queried the hatched areas shown on the plan (at page 15 of the relevant hearing bundle) and whether they are lifts.

5.4 MSQC confirmed they are the main entrances, there is a fire exit to the left and staff entrance just to the left of the three hatched areas. MSQC further explained that what the Claimant was seeking was an order that the entrances are not blocked and clarified that the Claimant was not asking the protestors not to protest (not even in private areas) just that the doors/entrances to Shell Centre Tower are not blocked.

5.5 MSQC queried whether the Judge had read the evidence and to which he confirmed he had. The Judge expressed that his concern on reading the evidence was that Mr Keith Garwood talks of upsetting staff and the banging of drums etc neither of which will convince a judge that an injunction should be granted.

5.6 MSQC confirmed that that was relevant context only – the Claimants are not seeking an order to prevent the upsetting of staff etc and that this was predominantly a trespass claim with an element of private nuisance.

5.7 There was then a discussion in respect of the possibility of aggravated trespass and acknowledgement that that was a criminal offence. MSQC confirmed that Articles 10 & 11 do not bite so much in respect of that.

5.8 The Judge then turned to RS for his submissions.

5.9 RS submitted that his concern was exactly as the Judge had identified earlier in that a term in the injunction order which refers to blocking entrances/exits – even if the land is privately owned, would not delimit activity strictly under the doorway. RS accepted the point that MSQC had made that Articles 10 and 11 do not bite in respect of the doors. RS further submitted that a protestor reading the injunction order or police would not understand.

5.10 The Judge suggested that if the word "doorway" is used then it gets round the problem.

5.11 RS said he was not sure he was persuaded to agree with that and that it would be some help but it would not go far enough. The order does not direct the protestor that they may still protest on the highway. It would be far better to have words specifically stating where the protest can and cannot be.

5.12 RS suggested that this could be dealt with in one of two ways. There could either be:

5.12.1 an express overarching provision to the order which makes it very clear that it does not apply to public land; or

5.12.2 the term itself if tweaked with words similar to those included in the skeleton submitted (by RS).

5.13 The Judge queried how one would block save for physically doing so.

5.14 RS said that there are degrees of physical blocking and that one might block by say forming a human chain or one could make a column that stretches into the road or by bike for example. RS submitted that the bike column example would be caught by the order and therefore in

order to limit the condition there needed to be words which state where the protestors can stand (either directly or indirectly under the door frame) or make it clear that the order only applies to private land.

5.15 The Judge said there could be an argument that it is not Shell's obligation to tell protestors what they can and cannot do.

5.16 RS submitted that the particular condition in the draft order should be construed very narrowly indeed i.e. physically blocking the doorway and being under it.

5.17 The Judge queried whether he had paragraph 2 of the draft order in front of him and paragraph 2.1 was then considered. The Judge stated that it was pretty clear that paragraph 2.1 related to trespass. RS agreed that it corresponds with tortious conduct. The Judge stated that it was not about criminal damage to which RS agreed save that it injuncts conduct which is already a criminal offence.

5.18 RS stated that the blocking condition was the most troubling and that it is troubling when injunctions are at large being used by the Claimant to impose more serious criminal sanctions.

5.19 MSQC stated that she wished to deal with the criminal sanctions point and referred to paragraph 143 of the *Ineos* judgment.

5.20 The Judge confirmed that he was with MSQC on that point.

5.21 MSQC submitted that simply because there is another route, which you are not in control of, does not mean that no injunction should be granted. MSQC referred to the *Canada Goose* case, it is a balancing exercise. Secondly so far as wording is concerned, blocking a door is perfectly self-explanatory. You could refer to a door within the building but it is blindingly obvious that that is what is intended.

5.22 The Judge stated he was perfectly happy with the draft on that basis.

5.23 MSQC stated that she would push back on any further clause in respect of where people can protest – the Claimant is concerned about its own land and it is not the Claimant's job to tell people where to protest.

## 6. THIRD PARTY DISCLOSURE APPLICATIONS (PURSUANT TO CPR 31) IN RESPECT OF SHELL CENTRE TOWER

6.1 The Court returned to the subject of the Disclosure Orders.

**6.2** RS stated that the submissions made in relation to the words "reasonably believe" (to be inserted in the Disclosure Orders) was on the basis of the previous order he had seen. Having seen the updated order (containing the words "may constitute a possible breach" and "any such possible breach"), RS submitted that the vagueness of the wording "may constitute a possible breach" is far too broad and that it entirely lends itself to subjective interpretation. RS submitted that the wording "may" should be removed from the draft order and amended to "reasonably believe" which is far more certain and far more proportionate.

6.3 The Judge then asked MSQC what, in relation to the Disclosure Orders, she had to say about the wording of the proposed disclosure threshold.

6.4 MSQC said that "reasonably believe" was unworkable, the options seemed to be that the police can either:

6.4.1 Supply details on an arrest (which was said by RS to be objectionable on the basis the police may not prosecute); or

6.4.2 Allow the police form a view on the breach.

6.5 MSQC submitted that if additional wording ("reasonably believe") is included, that introduced unhelpful uncertainty: who determines whether a belief is or is not reasonable and is there a potential claim against the police if it is not reasonable?

6.6 MSQC submitted that the proposed wording of the injunction order is simple and the disclosure would extend to any arrest associated with that.

6.7 The Judge queried what the current key phrase was in the Disclosure Orders.

6.8 MSQC stated that the operative clause is that the respondent shall give disclosure pursuant to CPR 31.17 of "those documents identifying the names and addresses of any person who has been arrested, after this order comes into effect, by one of her Majesty's officers in relation to conduct and/or activity which may constitute a possible breach of the injunctions granted in these proceedings".

6.9 The Judge suggested removal of the word "possible" on the basis that it avoids another layer of subjectivity. MSQC agreed.

**7. SERVICE ON MR SMITH**

7.1 The Judge then queried whether there was anything else to be dealt with.

7.2 MSQC said that the only point coming to mind was service on Mr Smith.

7.3 The Judge said that he would rise for 5 minutes to collect his thoughts as he would like to deliver judgement today and avoid delay. In the meantime, the Judge asked that Counsel discuss service on Mr Smith.

**Adjourned at 15:20**

**Reconvened at 15:30**

**8. JUDGEMENT**

8.1 The Judge asked whether Counsel had reached agreement on service upon Mr Smith. MSQC confirmed that they had and that service via solicitors was agreed.

8.2 The Judge then delivered judgement:

8.2.1 The proceedings are applications for two injunctions.

8.2.2 The Claimants are two linked companies, they are different corporate entities and will be referred to as either Shell or the Claimant.

8.2.3 Injunctions are sought of two very different sites:

(a) Shell Haven Terminal

(b) Shell Tower Centre (an office building in London)

8.2.4 The substance of the orders sought:

(a) An interim order banning certain conduct, in a slightly modified form, for a period of one year, or until trial, or whichever sooner.

(b) Alternative service provisions for unknown defendants.

(c) Order for third party disclosure under CPR Part 31, against the Chief Constable of Essex and the Commissioner of the Metropolitan Police Service, requiring the names and addresses of anyone arrested.

8.2.5 There was some discussion as to whether there should be consolidation of the two Claims under CPR 33.1 but for the reasons discussed, everyone agrees that they should not.

8.2.6 The Judge directed that these cases should be listed together unless a time comes that either Claim should be dealt with separately for example enforcement proceedings in respect of behaviour which does not affect the other site.

8.2.7 For the time being the default position is that where one case is listed, the other is also to be listed and heard at the same time.

8.2.8 The Defendants are in the main, persons unknown defined by actions they might carry out which is anticipated protests against Shell, by Just Stop Oil, Extinction Rebellion, Insulate Britain and no doubt others.

8.2.9 There is now one named Defendant, Mr Smith, joined via an unopposed application in relation to the Shell Centre Tower Claim.

8.2.10 Mr Smith has served a witness statement and is represented by RS (thanks expressed to Counsel / legal teams for help given in reaching conclusion in this case).

8.2.11 Before Mr Smith joined in, a skeleton had been served on behalf of Ms Branch and Ms Branch has been involved in Extinction Rebellion. Ms Branch had received an email, via a service email address, in relation to these proceedings.

8.2.12 At a similar injunction hearing earlier this week, but on a different application, Counsel attended for Ms Branch, and the Judge heard submissions. On a pragmatic basis and in advance of this hearing, the Judge asked for views in respect of hearing submissions for Ms Branch.

(a) Shell required firstly that before doing so there should be an application made under CPR 40.9 and probably if such an application should be made it should not be allowed as Ms Branch is not "directly affected" by the order sought.

(b) HJA replied by letter stating that firstly Ms Branch was no longer applying to make representations under CPR 40.9 (on the basis that Mr Smith was applying to be a Defendant to the Shell Centre Tower Claim), but secondly suggested Ms Branch was "directly affected" and could fit within the ambit of CPR 40.9, as "she is a supporter of Extinction Rebellion. She would like protests against oil companies to be effective. She does not want lawful protest to be quelled by unfair and oppressive injunctive relief."

8.2.13 The Judge concluded that he did not need to decide this now, but normally someone who is not caught by the terms of the injunction would not be caught by CPR 40.9 however, in a protest action, where all or most of the defendants are persons unknown, his tentative view is that where Article 10 and Article 11 rights are involved and where most defendants are unknown, the words "directly affected" are just wide enough to encompass someone in Ms Branch's position and her submissions would therefore have been heard.

8.2.14 An argument which was raised in correspondence, but which was not furthered was the "floodgates" argument. If that is a concern, firstly the Court can be flexible to permit sensible limited numbers of interested parties and secondly the Court can use robust case management powers to prevent this (i.e. avoiding cases being used for political argument etc). The Judge stressed that this is a tentative view and fact sensitive.

***Shell Haven Evidence***

8.2.15 Mr Stephen Brown has made two witness statements in which he refers to historic protests and other geographical plots/premises:

(a) Events on 3 April 2022 which saw a large group of protestors (eight protestors boarded tankers and blocked the first tanker in) and police attendance. This activity lasted for approximately six hours. The security team have also seen people scoping and attempting to access the jetty at Shell Haven.

(b) Other examples of other similar activities nearby (sufficiently proximate geographically and by similar group) cause concern that Shell Haven could be an imminent target.

8.2.16 In his second witness statement Mr Brown in essence establishes that there have been no further protests targeted at Shell Haven but that there have been other protests/proclamations that lead him to fear that protests are very likely to take place in the near future and on a substantial basis.

***Shell Centre Tower Evidence***

8.2.17 The evidence in respect of events/possible events at Shell Centre Tower comes from Keith Garwood, the Asset Protection Manager.

8.2.18 In his two witness statements, he writes of the protests at Shell Centre Tower and elsewhere in London. The concerns are about trespassing and intimidating staff. Trespass requires shut down of offices. Mr Garwood also suggested that the blocking of roads/pavements would impact others, pose a danger and block access for emergency vehicles. Some of the events referred to were:

(a) 6 April – paint like substance thrown;

(b) 13 April – a number of protestors at Shell Centre Tower;

(c) 15 April – banging of drums etc intimidating staff and protestors gluing themselves to reception area of Shell Centre Tower, resulting in the lockdown of Shell Centre Tower;

(d) 20 April – lockdown of Shell Centre Tower.

8.2.19 It must be said and is worth stressing that there is no account of any violence against any person. The protests are loud, no doubt upsetting to some and potentially disruptive, but are peaceful.

8.2.20 The Judge had also read statements from Shell's solicitors in respect of methods of service and contact with the relevant police forces, who are neutral or supportive of the applications for disclosure.

8.2.21 Mr Smith has served a witness statement which sets out concerns in respect of climate emergency, dangers to humanity and the planet and those who have paid with their lives. The statement is critical of Shell but it is not for the Court to express views.

8.2.22 Mr Smith goes on to talk about the Shell Centre Tower as a protest symbol and the importance of the site for protests.

8.2.23 At paragraph 10 of Mr Smith's witness statement, he refers to the protests as "extended to the street outside… not confined to the building… generally confined to gathering outside the building, holding banners and signs and chanting slogans". Additionally, Mr Smith states that "our protests do cause some disruption, but we do allow traffic to pass on the road, and we do not prevent pedestrians from passing through the group, in fact we welcome interaction with the public and make the most of outreach opportunities".

8.2.24 At paragraphs 11 – 12 of Mr Smith's witness statement, he refers to engaging with Shell and bringing the "protest directly to those who are part of the destructive business practice", and that it was "Shell's decision to lock down the building as a result of our protest" and that "our presence at Shell is a tiny reality check on the multi-million pound "Greenwash" campaign".

8.2.25 Looking to the terms of the orders sought by Shell these are relatively restrained and would not restrict the activity that Mr Smith refers to.

8.2.26 Section 12(2) Human Rights Act 1998 prevents the making of an order which limits freedom of expression where the defendant is not present or represented. That limitation does not apply where all practical steps have been taken to make the defendants aware.

8.2.27 Having read evidence from the Claimants' Solicitors, who make clear that emails have been sent to groups, the Judge was satisfied that the Claimants have taken all practical steps and that the Judge could make the order sought.

8.2.28 Section 12(3) Human Rights Act 1998 – on one view this section is not really intended for cases like this but on the basis of Court of Appeal authority means the Judge must follow.

8.2.29 The established test for injunctions is *American Cyanamid* – is there a serious question to be tried and are damages an adequate remedy?

8.2.30 The test is easily met in this case:

(a) Actions planned clearly amount to strong basis for action of trespass / nuisance.

(b) Given the sums involved in the oil industry and practicality of recovering costs from defendants (some have no assets), damages are not adequate.

8.2.31 This is an anticipatory injunction, it is largely sought against persons unknown. *Ineos CA* and *Canada Goose* are particularly significant for cases like this. *Ineos CA*, at paragraph 34, states that the terms of the injunction may not be so wide as to restrict lawful conduct and it must be clear what cannot be done.

8.2.32 *Canada Goose* modified requirements:

(a) Prohibited acts must correspond to the threatened tort and may include lawful conduct if there is no other proportionate means of protecting the claimant's rights

(b) Terms must be sufficiently clear and precise so those affected know what they must not do.

8.2.33 In *Vastint*, Mr Justice Smith – two decisions of the Court. Adopt his summary in gratitude.

(a) Is there a strong possibility that D will imminently act to infringe rights?

(b) If so, is the harm so "grave and irreparable" that damages would be inadequate remedy?

8.2.34 The Judge did have the greatest concerns in cases like this about blocking doors/entrances. The case of *Zeigler* deals with the blocking of roads. *Zeigler* is a landmark case but its effects should not be misunderstood. Blocking roads is not lawful or legitimate and the case does not say that blocking roads is legitimate but on occasions it may not be a crime.

8.2.35 The limits of *Ziegler* in this case were made clear in *Cuciurean*. *Ziegler* does not impose an extra test under aggravated trespass (section 68 of the Criminal Justice and Public Order Act 1994), on the basis that Article 10 and 11 rights do not include the right to trespass (and do not trump proprietary right).

8.2.36 In a European Court of Human Rights case *Kudrevicius v Lithuania* 62 EHRR 34 at paragraph 91 – the Court said right to freedom of assembly, fundamental right in democratic society… foundation of society so should not be interpreted restrictively.

8.2.37 Balance of property rights and protestors has to be struck now, at this stage, when injunction is granted (*National Highways*).

8.2.38 In a case where a great majority of defendants or potential defendants are not represented, there is a greater need to justify making any order.

8.2.39 Orders the Judge was prepared to make forbid certain actions (different types of trespass) and the Judge made those orders having been satisfied:

(a) That if this had reached trial, the underlying claims have a strong basis for action in private nuisance and trespass.

(b) Given the sorts of sums involved (and practicality of obtaining damages) – damages would not be adequate remedy.

(c) There is a strong possibility that the Defendants will willingly act to infringe Claimants' rights and similar actions will continue in future.

(d) The harm caused by the activities would amount to grave and irreparable harm. Trespassing on site could lead to highly dangerous outcomes, especially in terms of flammable liquids and risk of harm. Blocking entrances could lead to other considerable damages – largely business interruption and large scale cost to the Claimants' business.

8.2.40 The Claimants have rights and are entitled to seek protection from the Court. Just because other people might have strong views, this does not stop the Claimants from seeking protection (lawful business and relevant criteria met).

8.2.41 Shell has in the Judge's view been appropriately restrained in the orders sought (*Cuciurean*). *Cuciurean* makes clear that *Ziegler* balance does not apply with trespass.

8.2.42 Re changes/modifications to the terms of the draft orders in respect of Shell Haven and Shell Centre Tower, the changes the Judge suggested, and which have been accepted on behalf of Shell make it clear (if in any doubt) that the only activities that are banned are those that include trespass on the property of which Shell is the occupier. It follows that the orders which have been made do not the Judge's view infringe *Zielger* and do not damage the delicate balance between property owners and protestors.

8.2.43 There are applications for alternative service set out in the draft order. In any case where persons unknown are involved it is sensible to have variety of methods of service. The methods set out in draft order are sensible, broad and are approved.

8.2.44 Mr Smith has been named in respect of one of the injunctions – HJA will accept service via the traditional method.

8.2.45 The Claimants also seek orders under CPR 31 from the relevant police forces. Both forces have been notified and are content for the applications to be made and did not require representation at hearing.

8.2.46 It seemed to the Judge that the disclosure sought is the most sensible and best way to identify potential defendants. Shell are entitled, once an injunction has been obtained, to have practical means at their disposal to enforce against those who breach the injunction.

8.2.47 Anxious to ensure that confidentiality clauses in respect of information obtained were tamed.

8.2.48 There was some argument before the Judge as to what / how one should delineate between the police forces. What information the police should make available to Shell. The draft order proposed was material that "may constitute a possible breach". RS suggested this was too wide and instead suggested: "conduct or activity which is reasonably believed to be breach of injunction". The happiest formulation that allows Shell to obtain/retain material is the formulation suggested by Shell with removal of the word "possible". On that basis, the Judge was also prepared to make that part of the order.

8.2.49 The Judge had suggested to MSQC that she and her team redraft the orders in the terms discussed (and in the terms hopefully discussed slightly more fully in this judgement) to be issued on the day immediately after the hearing.

8.2.50 RS is to be provided with draft orders and the Judge was happy to entertain suggestions/amendments but, in the first instance, amendments are to be agreed between Counsel. The Judge was otherwise happy to see the drafts via email and via the associate that sat before the Judge (i.e. Phil Earley) before deciding final details. This is an opportunity to tighten up the wording of the orders, not to relitigate.

8.2.51 The Judge then queried whether there was anything else to be dealt with.

8.2.52 MSQC suggested, in respect of the third-party Disclosure Orders, that there be separate orders for each Claim (separate to the injunction order) otherwise both police forces would have to be joined.

8.2.53 The Judge asked to see the orders in draft and would then decide how to proceed.

8.2.54 The Judge asked whether there was anything else and to which Counsel confirmed that there was not.

**Hearing concluded at 16:05.**