

Claim No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
ROYAL COURTS OF JUSTICE

BETWEEN

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

(2) THOMAS BARBER
(3) MICHELLE CADET-ROSE
(4) TIMOTHY HEWES
(5) JOHN HOWLETT
(6) JOHN JORDAN
(7) CARMEN LEAN
(8) ALYSON LEE
(9) STEPHEN PRITCHARD
(10) AMY PRITCHARD
(11) PAUL RAITHBY
(14) JOHN SMITH
(15) BEN TAYLOR
(17) ANTHONY WHITEHOUSE
(19) PERSONS UNKNOWN WHO ARE ORGANISING, PARTICIPATING
IN OR ENCOURAGING OTHERS TO PARTICIPATE IN PROTESTS
AGAINST THE PRODUCTION AND/OR USE OF FOSSIL FUELS, IN
THE LOCALITY OF THE SITE KNOWN AS KINGSBURY OIL
TERMINAL, TAMWORTH, B78 2HA
(20) JOHN JORDAN
AND 108 OTHERS LISTED AT APPENDIX A

Defendants

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANT

For Trial on 11-13 June 2024

INTRODUCTION

1. This is an application made by North Warwickshire Borough Council (the “authority”) for a final injunction to restrain protests which have been characterised by disorder, nuisance and criminal behaviour in the immediate locality of Kingsbury Oil Terminal, Tamworth, B78 2HA (“the Terminal”).

BACKGROUND FACTS

Kingsbury Oil Terminal

2. Kingsbury Oil Terminal is a large complex of individual oil terminals owned and operated by Shell UK Ltd United Kingdom, Oil Pipelines Ltd, Warwickshire Oil Storage Ltd and Valero Energy Ltd. It is a “multi-fuel” site, with a storage capacity of around 405 million litres of flammable liquids, including unleaded petrol, diesel, and fuel additives. It is the largest inland oil storage depot and is served by pipelines that run beneath Piccadilly Way.

3. The Terminal is designated an “upper tier site” for the purposes of the Control of Major Accident Hazards Regulations 2015. Such a designation is reserved for “high risk establishments” due to the quantity of dangerous substances that are stored on site. Controlled items, such as mobile phones, cigarettes, lighters, paging units, and matches, are prohibited within its perimeter due to the potential presence of explosive atmospheres (**Core Bundle 52-53 §7-9, 234-235 §9**).

Events Leading to the Application

4. In March 2022, the authority received intelligence that a large-scale oil protest was planned to take place outside the Terminal on 1 April 2022. In order to disincentive the protestors, Valero Energy, one of the operators at the Terminal, obtained an interim injunction prohibiting protestors from entering the Terminal, interfering with its land, and otherwise causing nuisance. This injunction was ineffective, and between 1 and 5 April 2022, protestors were arriving in groups of approximately 40. They glued themselves to the road servicing the main entrance to the Terminal, and then climbed aboard oil tankers that were forced to a halt.

5. By 7 April 2022, protestors had broken into the Terminal compound and locked themselves onto large fuel storage tanks, some of which were insecure. Whilst within the compound, the protestors were using their mobile phones to document their activities on social media. As a result of this protest, a large policing operation was initiated, utilising a variety of specialist teams and working alongside staff from the Terminal and the fire service to remove the protestors safely. This caused the Claimant very serious concerns about risk of oil igniting and causing a major emergency potentially affecting its entire area, and it decided to seek an injunction of its own in pursuance of its statutory functions.

6. On 9 April 2022, protestors deposited a caravan on to the side of the road on Piccadilly Way, which is a road to the south of the Terminal. 20 Defendants glued themselves to the sides and top of the caravan, whilst further Defendants attempted to dig a tunnel under the road via a false floor inside the caravan in order to destabilise the road and prevent oil tankers from leaving the Terminal.

Procedural History

7. Because of this escalating conduct and the serious and imminent threat that it was posing to public safety and the environment, the authority considered that some urgent action needed to be taken before the Easter Bank Holiday weekend. Accordingly, the authority made an urgent application for an interim injunction and power of arrest against persons unknown and 18 named defendants to restrain public nuisance, criminal and anti-social behaviour with protests at the Terminal. Only informal notice was given to the defendants.

8. Late in the evening of 14 April 2022, the matter was heard by Mr Justice Sweeting who granted the relief sought, subject to minor amendments including restricting the “buffer zone” (an area around the perimeter of the Terminal in which protests were entirely prohibited) to 5 metres. The return hearing was listed for 28 April 2022.

9. Thereafter, between April 2022 and September 2022 72 individuals have been successfully committed for breach of the injunction. Of these individuals:

(i) Michelle Cadet-Rose, Jonathan Coleman, Elizabeth Garratt-Wright, Gwen Harrison, Timothy Hewes, Joe Howlett, Alyson Lee, Victoria Lindsell, Peter Morgan, Catherine Rennie-Nash, Vivienne Shah, Sarah Webb, William White, Lucia Whittaker-De-Abreu and Caren Wilden have been successfully committed for breach of the injunction on two separate occasions;

(ii) Sarah Benn, Emily Brocklebank, Michelle Charlesworth, Barry Mitchell, Rajan Naidu, David Nixon, Amy Pritchard and Hannah Torrance Bright have been successfully committed for breach of the injunction on three separate occasions; and

(iii) Simon Milner-Edwards and Margaret Reid have been successfully committed for breach of the injunction on four separate occasions.

10. Those who were successfully committed on three occasions or more were subjected to immediate custodial sentences of up to 85 days. The nature of the breaches has included:

(i) Protesting within the buffer zone (before it was removed on 5 May 2022),

(ii) Obstructing entrances to the Terminal,

(iii) Digging and occupying tunnels within the locality of the Terminal,

(v) Breaking into the Terminal compound and climbing onto refuelling stations, and

(vi) Tampering with and moving valves serving oil tankers.

11. On 5 May 2022, a review hearing was held before Sweeting J. At the outset of the hearing the authority applied to amend the injunction by removing the buffer zone as the protests on 27-28 April 2022 and 5 May 2022 had been peaceful and not the kind of protest that the injunction ever sought to prevent, rather the buffer

zone was intended to be a means of protecting against unlawful entry into the Terminal.

12. The only defendant represented at that hearing was Jake Handling, whose Counsel made wide-ranging submissions in opposition to the continuation of the injunction and power of arrest. At the end of the hearing, Sweeting J ordered that the injunction and power of arrest should remain in force, subject to the amendments suggested by the authority, pending judgment.

13. Sweeting J handed down judgment on the grant of interim relief on 14 July 2023.

14. At all stages in the process, the Orders of the Court have made provision for the service by any person wishing to take part in the proceedings of an Acknowledgement of Service and for liberty to apply by anyone affected by the interim injunction. No-one has filed an Acknowledgement of Service or applied to the Court for permission to take part out of time.

LAW

Powers of the Authority to Seek Injunctive Relief

Section 222, Local Government Act 1972 (“1972 Act”)

15. The authority has various powers to seek injunctive relief. The principal power relied on is s.222(1), Local Government Act 1972, which provides as follows:

“(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and

(b) ...”

Expedient

16. The s.222 power is available where the authority considers that it is expedient to exercise it for the promotion or protection of the interests of the inhabitants of its area. In *Stoke on Trent BC v B & Q Retail* [1984] 1 Ch 1, CA, Lawton LJ construed this condition broadly, at p.23A/C (on which issue the House of Lords ([1984] AC 754, HL) made no comment).

“They must safeguard their resources and avoid the waste of their ratepayers' money. It is in everyone's interest, and particularly so in urban areas, that a local authority should do what it can within its powers to establish and maintain an ambience of a law-abiding community; and what should be done for this purpose is for the local authority to decide.”

17. In the present case, the authority considers it expedient to bring this claim for the reasons set out below.

Power of Arrest

18. Section 27, Police and Justice Act 2006 provides as follows:

“(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants of their area).

“(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

“(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection.

“(4) Where a power of arrest is attached to any provision of an injunction under subsection (2), a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of that provision.

“(5)...”

Other powers and duties

19. The authority also relies on its other powers such as:

(i) s.1, Localism Act 2011 (the power to do anything that individuals, with full capacity, generally may do, in any way whatsoever and unlimited by the existence of any other power of the authority which to any extent overlaps the general power); and

(ii) s.130(2) and (5), Highways Act 1980 (the power to seek injunctive relief in equivalent terms to s.222, 1972 Act to assert and protect the rights of the public to use the highway).

20. By section 17 of the Crime and Disorder Act 1998, the Claimant is under a statutory duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area.

Human Rights Act 1998, sch.1, arts 10 and 11

21. Articles 10 and 11 of the European Convention on Human Rights are engaged in this case.

22. Article 10 provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

“2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

23. In *R (Gaunt) v Office of Communications (Liberty intervening)* [2011] EWCA Civ 692, at [33] Lord Neuberger of Abbotsbury MR referred to the Opinion of Lord Hope in *R v Shayler* [2003] AC 247, at [59]-[61]:

“33. Later in his opinion, at paras 59-61, Lord Hope explained “the process of analysis” which had to be carried out when considering whether a limitation on freedom of expression is justified on the ground of “pressing social need”. First, the state must show that “the objective which is sought to be achieved...is sufficiently important to justify limiting the fundamental right”. Secondly, it must show that “the means chosen to limit that right are rational, fair and not arbitrary”. Thirdly, it must establish that “the means used impair the right as minimally as is reasonably possible”. As he went on to say, “it is not enough to assert that the decision that was taken was a reasonable one”, and “a close and penetrating examination of the factual justification for the restriction is needed”.”

24. For the reasons set out below, it is submitted that the injunction sought in this case satisfies the requirements of Lord Hope’s analysis.

25. Article 11 provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

“2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of... public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...”.

26. The right protected by Art.11 is of “peaceful” assembly, not of any assembly even if causing a public nuisance or other public order disturbance.

Final Injunctions Against Persons Unknown

Wolverhampton v London Gypsies

27. In *Wolverhampton City Council v London Gypsies* [2023] UKSC 47; [2024] 2 WLR 45, the Supreme Court considered the history of injunctions against “persons unknown” in the sense of persons who have not yet been identified and cannot be shown to have committed any conduct prohibition of which is sought by way of injunction, referred to as “newcomers” in the case law.

28. The Supreme Court held (*per* Lords Reed, Briggs and Kitchin at [167]) that: “...there is no immovable obstacle in the way of granting injunctions against newcomer[s] ..., on an essentially without notice basis, regardless

of whether in form interim or final, either in terms of jurisdiction or principle.”

29. The Court held that this did not necessarily mean that injunctions ought to be granted, either generally or on the facts of any particular case. They are only likely to be justified as a novel exercise of an equitable discretionary power in the following circumstances.

(i) There must be a compelling need, demonstrated by detailed evidence, for the protection of civil rights, the enforcement of planning control, the prevention of anti-social behaviour or such other statutory objective as may be relied upon in the locality which is not adequately met by any other measures available to the applicant local authorities.

(ii) There must be procedural protection for the rights of the affected newcomers, sufficient to overcome the strong *prima facie* objection of subjecting them to a without notice injunction otherwise than as an emergency measure to hold the ring. This will need to include an obligation to take all reasonable steps to draw the application and any order made to the attention of all those likely to be affected by it; and the most generous provision for liberty to apply to have the injunction varied or set aside, and on terms that the grant of the injunction in the meantime does not foreclose any objection of law, practice, justice or convenience which the newcomer so applying might wish to raise.

(iii) Applicant local authorities can be seen and trusted to comply with the most stringent form of disclosure duty on making an application, so as both to research for and then present to the court everything that might have been said by the targeted newcomers against the grant of injunctive relief.

(iv) The injunctions are constrained by both territorial and temporal limitations so as to ensure, as far as practicable, that they neither outflank nor outlast the compelling circumstances relied upon.

(v) It is, on the particular facts, just and convenient that such an injunction be granted.

30. The Court then discussed how a local authority is likely to demonstrate that each of these requirements have been met in any particular case. These issues have been further considered by the High Court in three recent decisions of Ritchie J: *Valero Energy Ltd & Others v Persons Unknown* [2024] EWHC 134 (KB), *Multiplex Construction Europe Ltd & Others v Persons Unknown* [2024] EWHC 239 (KB) and *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB).

Valero Energy Ltd & Others v Persons Unknown

31. The *Valero* decision (at [58]), which was an application for summary judgment, contains the most detailed consideration of these matters. Ritchie J distilled 15 requirements from the Supreme Court’s discussion in *Wolverhampton* and those that had been set out by Court of Appeal in *Canada Goose* (at [82]) which he held must be met for a final injunction against persons unknown to be granted. Those requirements are set out here in full.

“(A) Substantive Requirements

Cause of action

(1) There must be a civil cause of action identified in the claim form and particulars of claim. The usual *quia timet* (since he fears) action relates to the fear of torts such as trespass, damage to property, private or public nuisance, tortious interference with trade contracts, conspiracy with consequential damage and on-site criminal activity.

Full and frank disclosure by the Claimant

(2) There must be full and frank disclosure by the Claimant (applicant) seeking the injunction against the PUs.

Sufficient evidence to prove the claim

(3) There must be sufficient and detailed evidence before the Court on the summary judgment application to justify the Court finding that the immediate fear is proven on the balance of probabilities and that no trial is needed to determine that issue. The way this is done is by two steps. Firstly stage (1), the claimant has to prove that the claim has a realistic prospect of success, then the burden shifts to the defendant. At stage (2) to prove that any defence has no realistic prospect of success. In PU cases where there is no defendant present, the matter is considered ex-parte by the Court. If there is no evidence served and no foreseeable realistic defence, the claimant is left with an open field for the evidence submitted by him and his realistic prospect found at stage (1) of the hearing may be upgraded to a balance of probabilities decision by the Judge. The Court does not carry out a mini trial but does carry out an analysis of the evidence to determine if it (sic) the claimant's evidence is credible and acceptable...

No realistic defence

(4) The defendant must be found unable to raise a defence to the claim which has a realistic prospect of success, taking into account not only the evidence put before the Court (if any), but also, evidence that a putative PU defendant might reasonably be foreseen as able to put before the Court (for instance in relation to the PUs civil rights to freedom of speech, freedom to associate, freedom to protest and freedom to pass and repass on the highway). Whilst in *National Highways* the absence of any defence from the PUs was relevant to this determination, the Supreme Court's ruling in *Wolverhampton* enjoins this Court not to put much weight on the lack of any served defence or defence evidence in a PU case. The nature of the proceedings are "ex-parte" in PU cases and so the Court must be alive to any potential defences and the Claimants must set them out and make submissions upon them. In my judgment this is not a "Micawber" point, it is a just approach point.

Balance of convenience – compelling justification

(5) In interim injunction hearings, pursuant to *American Cyanamid v Ethicon* [1975] AC 396, for the Court to grant an interim injunction against a defendant the balance of convenience and/or justice must weigh in favour of granting the injunction. However, in PU cases, pursuant to *Wolverhampton*, this balance is angled against the applicant to a greater extent than is required usually, so that there must be a “compelling justification” for the injunction against PUs to protect the claimant’s civil rights. In my judgment this also applies when there are PUs and named defendants.

(6) The Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] UKSC 23, if the PUs’ rights under the European Convention on Human Rights (for instance under Articles 10(2) and 11(2)) are engaged and restricted by the proposed injunction. The injunction must be necessary and proportionate to the need to protect the Claimants’ right.

Damages not an adequate remedy

(7) For the Court to grant a final injunction against PUs the claimant must show that damages would not be an adequate remedy.

(B) Procedural Requirements

Identifying PUs

(8) The PUs must be clearly and plainly identified by reference to: (a) the tortious conduct to be prohibited (and that conduct must mirror the torts claimed in the Claim Form), and (b) clearly defined geographical boundaries, if that is possible.

The terms of injunction

(9) The prohibitions must be set out in clear words and should not be framed in legal technical terms (like “tortious” for instance). Further, if and in so far as it seeks to prohibit any conduct which is lawful viewed on its own, this must also be made absolutely clear and the claimant must satisfy the Court that there is no other more proportionate way of protecting its rights or those of others.

The prohibitions must match the claim

(10) The prohibitions in the final injunctions must mirror the torts claimed (or feared) in the Claim Form.

Geographic boundaries

(11) The prohibitions in the final injunctions must be defined by clear geographic boundaries, if that is possible.

Temporal limits - duration

(12) The duration of the final injunction should be only such as is proven to be reasonably necessary to protect the claimant's legal rights in the light of the evidence of past tortious activity and the future feared (*quia timet*) tortious activity.

Service

(13) Understanding that PUs by their nature are not identified, the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. The applicant must, under the Human Rights Act 1998 S.12(2), show that it has taken all practicable steps to notify the respondents.

The right to set aside or vary

(14) The PUs must be given the right to apply to set aside or vary the injunction on shortish notice.

Review

(15) Even a final injunction involving PUs is not totally final. Provision must be made for reviewing the injunction in the future. The regularity of the reviews depends on the circumstances. Thus such injunctions are "Quasi-final" not wholly final.

Jurisdiction and safeguards: consistency with Wolverhampton

32. The new jurisdictional basis for injunctions to be granted against persons unknown does not depend for its existence on the alignment of the injunctive

remedy with other forms of injunction or the procedural requirements applicable to them. As the Supreme Court said at [144]-[145]:

“144. Cumulatively those distinguishing features leave us in no doubt that the injunction against newcomers is a wholly new type of injunction with no very closely related ancestor from which it might be described as evolutionary offspring, although analogies can be drawn, as will appear, with some established forms of order. ... As Mr Drabble KC for the appellants tellingly submitted, it is not even that closely related to the established *quia timet* injunction, which depends upon proof that a named defendant has threatened to invade the claimants rights.

“145. Faced with the development by the lower courts of what really is in substance a new type of injunction, and with disagreement among them about whether there is any jurisdiction or principled basis for granting it, it behoves this court to go back to first principles about the means by which the court navigates such uncharted water.”

33. The Court identified that the injunction against persons unknown was essentially a new species of *contra mundum* injunction (at [238]) which:

“...is effective to bind anyone who has notice of it while it remains in force, even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action”

34. This conclusion arose from the application of the principles of equitable relief referred to in the Judgment (particularly from [147]-[153]) rather than from the application of previous authority in relation to the grant of injunctive relief in other contexts.

35. In the present context, this is of importance because the authority does not accept that the approach of Ritchie J in *Valero* was correct to attempt a synthesis of

Wolverhampton and *Canada Goose*. In particular, the Judge was, with great respect, wrong, at [57] to conclude:

“...from the rulings in *Wolverhampton* that the 7 rulings in *Canada Goose* remain good law and that other factors have been added.”

36. The procedural requirements in *Canada Goose* doubtless contain many similarities to those required by the Supreme Court in *Wolverhampton* but

(i) it is wrong in principle to import procedural requirements from the Court of Appeal into a remedy which the Supreme Court has held that the lower courts were wrong about the jurisprudential basis for and has introduced its own requirements based not on the previous Court of Appeal dicta but on first principles of equity; and

(ii) any such similarities should not mask the fact that there are also distinct differences between the *Canada Goose* procedural protections and those held to apply in *Wolverhampton*.

37. Thus for example, Ritchie J’s first substantive requirement, *i.e.* that “there must be a civil cause of action identified in the claim form and particulars of claim” potentially conflicts with the Supreme Court’s para.[238(ii)], that an injunction can be sought - and if granted will bind - anyone who knows of it “even though that person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action”.

38. Similarly, the reference to *quia timet* relief is not appropriate, given the Supreme Court’s conclusion (above para.32) that this type of injunction does not bear any particularly close relation to *quia timet* relief.

39. Most importantly, it is submitted that Ritchie J’s requirement for service is misplaced, derived as it is from para.82 of *Canada Goose* in which the Court of Appeal was drawing the very distinction between identifiable persons unknown and

newcomers (and interim and final relief) that the Supreme Court rejected in *Wolverhampton*. Ritchie J was wrong to consider it a requirement that

“the proceedings, the evidence, the summary judgment application and the draft order must be served by alternative means which have been considered and sanctioned by the Court. ”

40. The Supreme Court rejected the requirement for service, treating applications for injunctions in cases such as the present as a form of *ex parte* on notice application in which the Court would require to be satisfied that those likely to be affected by the injunction sought had been “notified” of the application and the terms of the proposed injunction, but not served with the proceedings or anything else.

41. In applying its first principles of equity to work out the correct approach to such cases, one of those principles on which it relied was that equity looks to substance rather than form. As the Court said at [151]:

“That principle assists in the present context for two reasons. The first (discussed above) is that it illuminates the debate about the type of injunction with which the court is concerned, here enabling an escape from the twin silos of final and interim and recognising that injunctions against newcomers are all in substance without notice injunctions. The second is that it enables the court *to assess the most suitable means of ensuring that a newcomer has a proper opportunity to be heard without being shackled to any particular procedural means of doing so, such as service of the proceedings.*” (Emphasis added.)

42. The Court repeatedly asserted the need for “notice” rather than service except in relation to named or identified Defendants (*e.g.* at [143(vii)] and [221]. The Court emphasised this at [230]:

“We are not concerned in this part of our judgment with whether respondents become party to the proceedings on service of the order upon

them, but rather with the obligation on the local authority to take steps actively to draw the order to the attention of all actual and potential respondents; to give any person potentially affected by it full information as to its terms and scope, and the consequences of failing to comply with it; and how any person affected by its terms may make an application for its variation or discharge (again, see para 167(ii) at para 29 above).

43. This does not necessarily mean that what may have been required by the Courts under the doctrine of substituted or alternative service, and what may be required as a matter of giving proper notice, will be different in substance. It is however important to proceed on the correct procedural basis enunciated by the Supreme Court rather than the incorrect basis identified by the previous lower Court authorities if a coherent set of procedural requirements consistent with the law as enunciated by the Supreme Court is to be developed.

Valero: applications by public authorities or private citizens

44. It should also be mentioned that in *Valero* and *Multiplex Construction*, Ritchie J was concerned with applications brought by private companies seeking to enforce their own private rights. In this case, the position is different: the authority is acting as a democratically elected public authority for the purpose of asserting, promoting and protecting the rights and interests of its inhabitants. This issue will be addressed below in relation to the *Valero* requirements where relevant.

SUBMISSIONS

Preliminary matters

Amendment of the Claim Form - Description of Persons Unknown

45. In *Canada Goose* [2020] 1 WLR 2802 (at [82(1)-(2)]), the Court of Appeal had held that the following requirements applied to the joinder of Persons Unknown:

“(1) The ‘persons unknown’ defendants in the claim form are, by definition, people who have not been identified at the time of the commencement of the proceedings. If they are known and have been identified, they must be joined as individual defendants to the proceedings. The ‘persons unknown’ defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention. In principle, such persons include both anonymous defendants who are identifiable at the time the proceedings commence but whose names are unknown and also Newcomers, that is to say people who in the future will join the protest and fall within the description of the ‘persons unknown’.

“(2) The ‘persons unknown’ must be defined in the originating process by reference to their conduct which is alleged to be unlawful.”

46. In his Judgment of 14 July 2023, Sweeting J said, at [145] that the requirements of [82(1)] above were met but that description of persons unknown did not meet those contained in [82(2)]. Accordingly, he held that the Claim Form and the Injunction Order and Power of Arrest require an amendment to be made to the description of the 19th Defendant.

47. Sweeting J’s judgment was issued before that of the Supreme Court in *Wolverhampton* which affects both sets of propositions in *Canada Goose* at [82] referred to above. The Supreme Court held, at [238(i)]:

“(i) The court has jurisdiction (in the sense of power) to grant an injunction against newcomers, that is, persons who at the time of the grant of the injunction are neither defendants nor identifiable, and who are described in the order only as persons unknown. The injunction may be granted on an interim or final basis, necessarily on an application without notice.

“(ii) Such an injunction (a newcomer injunction) will be effective to bind anyone who has notice of it while it remains in force, even though that

person had no intention and had made no threat to do the act prohibited at the time when the injunction was granted and was therefore someone against whom, at that time, the applicant had no cause of action. It is inherently an order with effect *contra mundum*...”

48. The Supreme Court’s comment at [221], that the actual or intended respondents to the application must be defined as precisely as possible, and that even where the persons sought to be subjected to the injunction are newcomers,

“ the possibility of identifying them as a class by reference to conduct prior to what would be a breach (and, if necessary, by reference to intention) should be explored and adopted if possible”

does not detract from the breadth of the ruling at [238]. The effect of the injunction remains *contra mundum* however the persons unknown are described and because it is properly considered a *contra mundum* injunction, the issue of service is not raised; the question is rather one of notification (see above, paras 40-43).

49. In other words, with a *contra mundum* injunction, the 19th Defendant is defined not by the description of the conduct in the claim form or injunction but by a person being a member of “the world”. The importance of the description is therefore not to define the scope of the class of potential newcomer falling within the 19th Defendant but to act as a notification to each person in the world that an injunction that may affect them is being sought or has been made, and to limit the necessary scope of notification that the court should require.

50. In the present case, the description of the 19th Defendant is, it is submitted, appropriate in that it refers to the specific location protected by the injunction and to the conduct of protesting in that location, albeit without specifying each and every one of the numerous prohibited acts. It is sufficient to bring the existence of the injunction to the attention of those who may intend to protest at the Terminal, and given that a protest may, at different times, be lawful or in breach of the

injunction, it is appropriate not to describe the 19th Defendant in unduly narrow terms.

51. If, however, notwithstanding the above, the Court still requires the authority to amend the description of the 19th Defendant, the authority is content to do so and suggests the form of amendment contained at **Supplementary Bundle 5-7**. The authority is prepared, if the Court requires it to do so, to undertake to file an amended Claim Form and Particulars of Claim so as to amend the description of the 19th Defendant.

52. Given that any new description

(i) would be narrower than is currently the case,

(ii) would be included in any final injunction granted by the Court in any event,

(iii) does not affect the named Defendants, none of whom has filed an acknowledgment of service, and

(iv) could be the subject of an application by a named defendant under the liberty to apply provisions of the final injunction sought should such a defendant consider themselves to have been disadvantaged by not having been served,

it is submitted that service of the amended Claim documents on any named Defendants should be dispensed with.

The Authority's substantive case

The need for an injunction

53. The authority seeks a final injunction for the protection of the inhabitants of its local area and those who work there and travel through it. The evidence of Steve Maxey and Jeff Morris provided for the initial injunction application in April 2022 describes the dangerous behaviour of protestors prior to the grant of the interim

injunction which included breaking into the Terminal and tampering with the pipework and other equipment, while using electrical devices in the vicinity of potentially explosive oil fumes. Locking on to oil tankers and tunnelling under highways serving the Terminal so as potentially to weaken their structure and cause a collapse was also highly dangerous and could easily have caused serious injury or death (**Core Bundle 234-235 §5-10, 377-382 §4-10**).

54. That situation may be contrasted with that which has existed since the committals in September 2022 following which there have been no breaches of the interim order, allowing the Terminal to operate safely. During the same period, the activities of Just Stop Oil protestors have not ceased but have been continuing elsewhere and, over time, become more brazen, violent and disruptive (see the statement of Steve Maxey, January 2024 (**Bundle 00**)). In addition, the disruption of the authority's council meetings in the autumn of 2023 clearly suggests that the Terminal and the authority remain targets for JSO and its members. It is entirely legitimate for the authority to consider that there remains a high risk of disruptive and dangerous protests at the Terminal in the absence of a final injunction.

55. As Mr Maxey has also made clear, the authority does not pursue this claim, as the protesters frequently suggest, to

- (i) protect the private interests and profits of the oil companies using the Terminal (indeed Valero have sought to protect their own interests by means of a more limited injunction), or to
- (ii) stifle freedom of expression which is specifically safeguarded by the terms of the final order sought.

Expedient for the promotion or protection of the interests of the inhabitants of North Warwickshire (s.222, 1972 Act)

56. The authority's aims are entirely legitimate and fall within the statutory criteria for bringing this claim. The authority submits that it is appropriate and expedient for the promotion or protection of the interests of the inhabitants of their

area, and in the exercise of the Court's discretion, that the defendants be restrained, by way of injunction, from committing tortious and criminal acts and, in particular acts amounting to a public nuisance and to breaches of the criminal law that the criminal law is unable to prevent.

57. Specifically, the authority considers that it promotes and protects the interests of the inhabitants of North Warwickshire:

- (i) that the authority endeavours to establish and maintain a law-abiding community;
- (ii) that local residents, workers, road-users and members of the public are protected from the serious and specific threats to their safety, health, property and peaceful existence presented by protests at the Terminal;
- (iii) that the roads and public facilities in North Warwickshire should remain open and freely available to members of the public;
- (iv) that businesses and their staff and customers, including the users of the Terminal, should be able to conduct their lawful business and use the area without facing the nuisance described in the witness statements filed in support of the initial application (**Core Bundle Tabs 23-26**) and without the disruption to their businesses and additional costs also described in those statements; and
- (v) that police and other emergency services staff should not be endangered by the activities of the protestors, and should not have to divert their resources in order to protect the community from the activities of the protestors.

58. Further, the Claimant considers it necessary and/or expedient for the said apprehended obstructions of the highway to be restrained by injunction, and that the injunctive relief sought in these proceedings is necessary to protect the rights of the public to the use and enjoyment of highways within its district, for the reasons set out above.

Other remedies not adequate

59. As set out in the witness evidence Steven Maxey (at **Core Bundle 165-166 §7-9**) and ACC Benjamin Smith (particularly at **Core Bundle 342**), other remedies available to the authority or to the police are simply inadequate to prevent or control the conduct complained of. The two main alternative remedies available to the authority are the Public Spaces Protection Order (“PSPO”) or the making of byelaws.

60. As to the first of these, the PSPO requires considerable consultation and cannot be made so as to restrict rights in relation to roads for which the Secretary of State is responsible (such as the M6) (Anti-social Behaviour Crime and Policing Act 2014, s.65). Nor could it be obtained against organisers. Breach is not arrestable and the maximum penalty for breach is a fine at level 3 on the standard scale (£1,000). The Court of Appeal accepted in *Sharif v Birmingham CC* [2021] 1 W.L.R. 685 that PSPOs could not be considered an adequate alternative to an injunction in a case involving organised car “cruises” on the public highway and indeed that that type of case was a “classic case” for an injunction (*per* Bean LJ at [42]).

61. Nor do byelaws provide a realistic alternative for much the same reasons. Even under the simplified “alternative procedure” for making byelaws (s.236A, 1972 Act and The Byelaws (Alternative Procedure) (England) Regulations 2016, SI 2016/165, the process requires:

- (i) the making of an initial proposal, as to which a proportionality assessment must be undertaken followed by consultation (Reg.5)
- (ii) an application for confirmation by the Secretary of State (s.135(2), 1972 Act and Reg.6)
- (iii) consideration of the confirmation application by the Secretary of State (for which there is no fixed timescale (Reg.7)
- (iv) publication of the approved byelaw with a further opportunity for the public to make written representations (Reg.8)

- (v) consideration of any representations made (Reg.9) and
- (vi) a final decision by the authority as to whether to make the byelaw.

62. In the context of the types of dangerous activity complained of in this case, where the need for relief was urgent and the situation fluid, so that *e.g.* the scope of the injunction granted on 14 April 2022 at the hearing on 5 May 2022, it would be wholly impractical to attempt to deal with the problem by the making of byelaws (see the statement of Steve Maxey paras 8-9 at **Core Bundle 166**).

63. Furthermore, both PSPOs and byelaws are effectively administrative acts of local authorities made without reference to the Courts. It would be surprising, in this context, if the Courts considered it preferable for the authority to use an administrative (or quasi-legislative) remedy rather than to present its case before the Courts for a decision to be made by an independent Judge.

The Valero Requirements

64. In addition to the issue of alternative remedies being inadequate, and regardless of the comments above suggesting modification of some aspects of the approach taken in *Valero*, the authority's application is in any event compliant in all respects with the approach set out in *Valero*.

Civil Cause of Action

65. The civil causes of actions as identified in the Claim Form and Particulars of Claim are those of (at paras 16-28, see **Core Bundle 13-16**)

- (i) public nuisance and
- (ii) criminal offences which are deliberate and flagrant and/or which cannot effectively be restrained by the use of criminal law sanctions (identified as a valid cause of action in *City of London Corporation v Bovis Construction Ltd* [1992] 3 All E.R. 697 and various cases under the Shops Act 1950, including *Stoke on Trent CC v B&Q* [1984] Ch 1 and [1984] A.C. 754.

66. The authority does not need to establish that it has a cause of action against the Persons Unknown described as the 19th Defendant, for the reasons set out by the Supreme Court at [238(ii)].

67. The cause of action has been proved to some extent by the successful committal of numerous Defendants for breach of the interim injunction.

Full and Frank Disclosure: what the Defendants might say.

68. This requirement is conceptually related to *Valero* requirement (4) - no realistic defence. The authority considers that a legal objection to the grant of an injunction may be based on the right to freedom of expression (Art.10, Sch.1, Human Rights Act 1998 or freedom of assembly (Art.11, Sched.1, Human Rights Act 1998).

69. Such objections would not however be valid. Both Art 10 and Art.11 describe qualified rights which may be interfered with for any of the reasons set out in Arts.10(2) and 11(2), which include, the interests of public safety, the promotion of public health, the prevention of crime and disorder, and the protection of the rights and freedoms of others.

70. While the forms of activity perpetrated by the Defendants and which the injunction seeks to restrain could be considered to be means of expression, in the circumstances of a protest, they were all unlawful either as a matter of criminal law or in tort. Nor is there any legal right to assemble for the purposes of committing nuisance or criminal offences (*Birmingham City Council v Afsar* [2020] 4 W.L.R 168 at [102]). The terms of the final injunction sought does not prevent protest from taking place outside the Terminal, even by its front entrance. It does not limit the numbers who may participate in lawful protest in this area. It simply seeks to

restrain protest inside the Terminal as outlined in red on the plan and the commission of certain inherently dangerous acts in the course of a protest carried on outside but in the locality of the Terminal. It is therefore not accepted by the authority that the people likely to be affected by the proposed final injunction would be prevented from exercising their Convention rights under Arts 10 or 11. The authority has undertaken a full Human Rights Act 1998 and Equality Act 2010 impact assessment (see **Bundle 166-168 and 328-338**).

71. Aside from a Convention-based challenge, it is difficult to see what legal defences could be raised beyond those argued fully both in writing and orally at the return date hearing on 5 May 2022 (see **Supplementary Bundle Tabs 2,4,5 and 7**) but rejected by Sweeting J in his detailed Judgment of 18 July 2023 (see **Core Bundle Tab 7**).

72. Arguments could be raised that the allegations made by the authority cannot be proven or that one or other of the safeguards required by the Supreme Court is not met on the facts, or that for those or other reasons the Court should not exercise its discretion to grant any injunction or an injunction in the terms sought, but these are on the facts and it is submitted that the merits of the authority's factual case are strong and satisfy the civil standard of proof.

73. As a matter of domestic law, there is no right to undertake the activities complained of by the authority and so if those activities can be established on the evidence, the case - if defended - must necessarily come down to a consideration of safeguards and discretion,

Sufficient Evidence to Prove the Claim

74. The evidence is clear, compelling and unchallenged. It is set out in the witness statements of Steve Maxey (**Core Bundle, Tab 19, 20 and 23**), ACC

Benjamin Smith (**Core Bundle Tab 24**) , Jeff Morris (**Core Bundle Tab 25**) and Stephen Brown (**Core Bundle Tab 26**). The successful committals of Jake Handling, Joshua Smith and of 70 other Defendants also supports the authority's case (the published judgments can be found in the **Supplementary Bundle** under **Tab C**)

No Realistic Defence

75. No Defendant has sought to defend this claim. Any defence that may be raised is considered above in accordance with the authority's disclosure duties. It is submitted that for the reasons there set out, any defence assertion that a final injunction would amount to a breach of the Defendant's rights under Article 10 or 11 or in domestic law would be bound to fail.

76. Further, any other argument of the type referred to above:

- (i) does not amount to a defence in the sense of demonstrating a right to continue with the conduct complained of; and
- (ii) relates to the matters on which the authority needs to satisfy the Court in any event and which are dealt with in the remaining parts of this skeleton argument.

Balance of Convenience - Compelling Justification

77. The balance of convenience must weigh in favour of granting the final injunction. The Claimant is seeking to restrain unlawful activity which is inherently dangerous and disruptive. The risk of explosion and injury caused by unauthorised incursions into the Terminal, locking on to oil tankers, hanging from structures on the land or tunnelling under highways or other roads used by tankers is high, and has the potential to cause irreparable harm to the lives of those involved, the emergency services, and those living or working in, or visiting the surrounding area.

78. The impact on those not involved in the protests or working at the Terminal may be less damaging to life and limb but this is not necessarily so, *i.e.* in the event of an explosion or major fire, local residents, workers, road users and other people in the area are still at serious risk of physical injury and damage to their property by, for example, the resulting smoke and toxic gasses. Local residents and businesses, are put at risk of serious disruption and breaches of their own Convention and domestic rights from which they require protection. There is no issue of weighing those rights against the rights of the participants because of the illegality of the conduct sought to be restrained.

79. Likewise, organisers and promoters of Just Stop Oil protests are causative of the criminal and tortious conduct that the authority seeks to prevent. It is the avowed aim of Just Stop Oil to conduct direct action and disruptive protests of this kind as is clear from their website and social media posts (**Core Bundle 186-188 §8**).

80. Their conduct, arranging and publicising protests which may include large numbers of people across the country and, indeed, coming from other countries, is a direct cause of the conduct complained of and contributes directly to the public nuisance and criminal offences committed at the protests.

Damages not an Adequate Remedy

81. Damages would not be an adequate remedy. These proceedings are brought by the authority as part of its public duties for the safety and comfort of its inhabitants. The conduct in question needs to be stopped. The authority does not seek, nor could it seek, financial compensation for the harm caused. Moreover, the intention of this litigation is proactively to prevent future nuisance and harm. It is clearly not an adequate remedy for the authority to wait for future protests and then seek damages, even if conceptually that were possible.

82. None of the named Defendants has indicated any willingness to offer to pay damages or costs or that they even have the ability to do so.

Definition of Persons Unknown

83. The injunction clearly and plainly identifies the persons unknown by reference to the activities that they are undertaking when the tortious and criminal conduct to be prohibited is committed. As stated above, paras 45-52, the authority is willing to amend the description of the 19th Defendant if the Court considers that necessary, contrary to the authority's primary case. The prohibitions are limited geographically and defined by reference to the Terminal, such that those who do not intend to participate in a protest in the locality of the Terminal will not be caught by its terms.

The Terms of the Injunction

84. The prohibitions are set out in clear words and avoid using legal and/or technical language. They do not prohibit conduct which is lawful.

Prohibitions match the Claim

85. The prohibitions are drafted so as to match the key features of the protests that have, in the past, amounted to a public nuisance and/or criminal offences.

Geographic Boundaries

86. The prohibitions in the final injunction are reasonably defined by clear geographic boundaries as highlighted in the map annexed to the injunction.

87. While the term "locality" is a flexible concept, it has been approved by the Court of Appeal as an acceptable means of describing a limited area protected by the provisions of an injunction: see *Manchester CC v Lawler* [1998] 31 HLR 119.

Temporal Limits

88. The evidence is clear that protestors are dedicated individuals, committed to their cause. This problem has existed at the Terminal since 2022. The Just Stop Oil protests have continued and are continuing across the country. In the circumstances, and bearing in mind the fact that an interim injunction has been in place for 26 months, it is submitted that a further 3 years is an appropriate duration for this final injunction (subject to annual reviews – see below). There is no evidence that the Defendants will abandon this occupation.

Service

89. The authority has complied with all the requirements of service approved by the Court to date, in respect of both named Defendants and persons unknown, save (in relation to persons unknown) as set out in the witness statement of Steve Maxey dated 5 June 2024, in relation to posting a hard copy of the Order of 6 December 2024 at the Terminal itself.

90. Notwithstanding the authority's arguments, set out above, as to whether or not formal service is necessary, it is uncontentioned that the Court has required service of the relevant documents to date, that the named Defendants have been personally served or, where they have consented, served by email, (and in the case of named Defendants for whom no contact details are known, in the same way as the 19th Defendant (persons unknown)).

The Right to Set Aside or Vary

91. The proposed final injunction gives any Persons Unknown the right to apply to set aside or vary the final injunction on short notice.

Review

92. Provision has been made in the proposed final injunction for annual reviews, the first of which is to be held within 12 months of the dated of the final hearing.

Power of Arrest

93. A power of arrest is also sought, pursuant to s.27, Police and Justice Act 2006. It is submitted that this is proportionate given the nature of the conduct prohibited by the injunction and the circumstances in which that conduct is likely to arise.

94. A power of arrest is needed to provide an effective means of enforcement for the injunctions, if granted, as the paper committal procedure would not enable police to deal with problems by arresting participants at the scene and bringing them before the court. Moreover, the paper procedure is lengthy and depends on the authority knowing the names and addresses of those taking part. Without being able to identify the names of the participants and to locate them, paper applications for committal are likely to be impossible to prosecute.

95. The authority submits that the conduct complained of includes, and the prohibitions in injunction sought relate to dangerous and harmful conduct carrying a significant risk of harm to the protesters themselves and others, including the emergency services, workers at the Terminal, local residents, road users and others.

96. It is inherent in the nature of protests of the kind complained of at an oil storage depot containing up to 400 million litres of combustible material, and with tankers entering and leaving the Terminal all day, that a power of arrest is necessary

and a paper committal process is not likely to resolve the problem even if the names and addresses of the protesters could be obtained.

Undertakings

97. For the reasons set out in the statement of Steve Maxey dated 5 June 2024 (paras 00-00), the authority is not willing to accept undertakings from the current Defendants (although it has accepted them from other Defendants who have not breached the injunction).

98. Those reasons are not repeated here given the length of this skeleton argument.

CONCLUSION

99. For all the above reasons, the Court is respectfully requested to grant the authority's application.

Jonathan Manning
Charlotte Crocombe
5 June 2024

4-5 Grays Inn Square
London WC1R 5AH.

APPENDIX A

- (22) MARY ADAMS
- (23) COLLIN ARIES
- (24) STEPHANIE AYLETT
- (25) MARCUS BAILIE
- (28) PAUL BELL
- (29) PAUL BELL
- (30) SARAH BENN
- (31) RYAN BENTLEY
- (32) DAVID ROBERT BERKSHIRE
- (33) MOLLY BERRY
- (34) GILLIAN BIRD
- (36) PAUL BOWERS
- (37) KATE BRAMFITT
- (38) SCOTT BREEN
- (40) EMILY BROCKLEBANK
- (42) TEZ BURNS
- (43) GEORGE BURROW
- (44) JADE CALLAND
- (46) CAROLINE CATTERMOLE
- (48) MICHELLE CHARLESWORTH
- (49) ZOE COHEN
- (50) JONATHAN COLEMAN
- (53) JEANINIE DONALD-MCKIM
- (55) JANINE EAGLING
- (56) STEPHEN EECKELAERS
- (58) HOLLY JUNE EXLEY
- (59) CAMERON FORD
- (60) WILLIAM THOMAS GARRATT-WRIGHT
- (61) ELIZABETH GARRATT-WRIGHT
- (62) ALASDAIR GIBSON
- (64) STEPHEN GINGELL
- (65) CALLUM GOODE
- (68) JOANNE GROUNDS
- (69) ALAN GUTHRIE
- (70) DAVID GWYNE
- (71) SCOTT HADFIELD
- (72) SUSAN HAMPTON
- (73) JAKE HANDLING
- (75) GWEN HARRISON
- (76) DIANA HEKT
- (77) ELI HILL
- (78) JOANNA HINDLEY
- (79) ANNA HOLLAND
- (81) JOE HOWLETT
- (82) ERIC HOYLAND

(83) REUBEN JAMES
(84) RUTH JARMAN
(85) STEPHEN JARVIS
(86) SAMUEL JOHNSON
(87) INEZ JONES
(88) CHARLOTTE KIRIN
(90) JERRARD MARK LATIMER
(91) CHARLES LAURIE
(92) PETER LAY
(93) VICTORIA LINDSELL
(94) EL LITTEN
(97) DAVID MANN
(98) DIANA MARTIN
(99) LARCH MAXEY
(100) ELIDH MCFADDEN
(101) LOUIS MCKECHNIE
(102) JULIA MERCER
(103) CRAIG MILLER
(104) SIMON MILNER-EDWARDS
(105) BARRY MITCHELL
(106) DARCY MITCHELL
(107) ERIC MOORE
(108) PETER MORGAN
(109) RICHARD MORGAN
(110) ORLA MURPHY
(111) JOANNE MURPHY
(112) GILBERT MURRAY
(113) CHRISTIAN MURRAY-LESLIE
(114) RAJAN NAIDU
(115) CHLOE NALDRETT
(117) DAVID NIXON
(118) THERESA NORTON
(119) RYAN O TOOLE
(120) GEORGE OAKENFOLD
(121) NICOLAS ONLAY
(122) EDWARD OSBOURNE
(123) RICHARD PAINTER
(124) DAVID POWTER
(125) STEPHANIE PRIDE
(127) SIMON REDING
(128) MARGARET REID
(129) CATHERINE RENNIE-NASH
(130) ISABEL ROCK
(131) CATERINE SCOTHORNE
(133) GREGORY SCULTHORPE
(135) VIVIENNE SHAH
(136) SHEILA SHATFORD
(137) DANIEL SHAW
(138) PAUL SHEEKY

- (139) SUSAN SIDEY**
- (141) JOSHUA SMITH**
- (142) KAI SPRINGORUM**
- (143) MARK STEVENSON**
- (145) HANNAH TORRANCE BRIGHT**
- (146) JANE TOUIL**
- (150) SARAH WEBB**
- (151) IAN WEBB**
- (152) ALEX WHITE**
- (153) WILLIAM WHITE**
- (155) LUCIA WHITTAKER-DE-ABREU**
- (156) EDRED WHITTINGHAM**
- (157) CAREN WILDEN**
- (158) MEREDITH WILLIAMS**