

**QUEEN'S BENCH DIVISION**

**B E T W E E N:**

- (1) ESSO PETEROEUM COMPANY, LIMITED  
(2) EXXONMOBIL CHEMICAL LIMITED**

**Claimants**

**-and-**

- (1) PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, ENTER OR REMAIN (WITHOUT THE CONSENT OF THE FIRST CLAIMANT) UPON ANY OF THE FOLLOWING SITES ("THE SITES")**

- (A) THE OIL REFINERY AND JETTY AT THE PETROCHEMICAL PLANT, MARSH LANE, SOUTHAMPTON SO45 1TH (AS SHOWN EDGED RED AND GREEN ON THE ATTACHED 'FAWLEY PLAN')**  
**(B) HYTHE OIL TERMINAL, NEW ROAD, HARDLEY SO45 3NR (AS SHOWN EDGED RED ON THE ATTACHED 'HYTHE PLAN')**  
**(C) AVONMOUTH OIL TERMINAL, ST ANDREWS ROAD, BRISTOL BS11 9BN (AS SHOWN EDGED RED ON THE ATTACHED 'AVONMOUTH PLAN')**  
**(D) BIRMINGHAM OIL TERMINAL, TYBURN ROAD, BIRMINGHAM B24 8HJ (AS SHOWN EDGED RED AND BROWN ON THE ATTACHED 'BIRMINGHAM PLAN')**  
**(E) PURFLEET OIL TERMINAL, LONDON ROAD, PURFLEET, ESSEX RM19 1RS (AS SHOWN EDGED RED AND BROWN ON THE ATATCHED 'PURFLEET PLAN')**  
**(F) WEST LONDON OIL TERMINAL, BEDFONT ROAD, STANWELL, MIDDLESEX TW19 7LZ (AS SHOWN EDGED RED ON THE ATTACHED 'WEST LONDON PLAN')**  
**(G) HARTLAND PARK LOGISTICS HUB, IVELY ROAD, FARNBOROUGH (AS SHOWN EDGED RED ON THE ATTACHED 'HARTLAND PARK PLAN')**  
**(H) ALTON COMPOUND, PUMPING STATION, A31, HOLLYBOURNE (AS SHOWN EDGED RED ON THE ATTACHED 'ALTON COMPOUND PLAN')**

- (2) PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, ENTER OR REMAIN (WITHOUT THE CONSENT OF THE FIRST CLAIMANT OR THE SECOND CLAIMANT) UPON THE CHEMICAL PLANT, MARSH LANE, SOUTHAMPTON SO45 1TH (AS SHOWN EDGED PURPLE ON THE ATTACHED 'FAWLEY PLAN')**

**PERSONS UNKNOWN WHO, IN CONNECTION WITH THE 'EXTINCTION REBELLION' CAMPAIGN OR THE 'JUST STOP OIL' CAMPAIGN, OBSTRUCT ANY OF THE VEHICULAR ENTRANCES OR EXITS TO ANY OF THE SITES**

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**SKELETON ARGUMENT ON BEHALF OF THE CLAIMANTS**

**FOR THE HEARING ON 4 APRIL 2022**

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## **Introduction**

1. The hearing on 5 April 2022 is the hearing of the Claimants' application for injunctive relief in order to restrain acts of trespass and nuisance on various sites in connection with certain forthcoming oil related protest activities.
2. The time estimate for the hearing is 2 hours (including 30 minutes pre-reading, 1 hour hearing time and 30 minutes judgment time).
3. Pre-reading of the following would be of assistance:
  - Particulars of Claim [**B/3/6**];
  - Witness Statement of Stuart Wortley dated 4 April 2022 [**CB/7/40**];
  - Witness Statement of Anthony Milne dated 3 April 2022 [**CB/17/308**].

## **The Properties**

4. The sites to which this Application relates ("the Sites") are as follows:
  - 4.1 *The Fawley Petrochemical Complex*
    - 4.1.1 This site is at Marsh Lane, Southampton SO45 1TH ("the Fawley Petrochemical Complex"); see the satellite image at [**B/9/117**].
    - 4.1.2 The Fawley Petrochemical Complex comprises an oil refinery ("the Fawley Oil Refinery"), a chemical plant ("the Chemical Plant) and a jetty ("the Fawley Jetty").
    - 4.1.3 The Fawley Oil Refinery is the largest oil refinery in the UK and provides 20% of UK refinery capacity.
    - 4.1.4 The Chemical Plant has a capacity of 800,000 tonnes per year, is highly integrated with the operations of the Fawley Oil Refinery and produces key components for a multitude of finished products manufactured in the UK or elsewhere in Europe.

## 4.2 *The Hythe Terminal*

4.2.1 This site is at New Road, Hardley S045 3NR (“the Hythe Terminal”). The Hythe Terminal is shown on the satellite image at **[B/9/118]**.

4.2.2 The Hythe Terminal is located close to the Fawley Petrochemical Complex and primarily serves the south and west of England.

## 4.3 *The Avonmouth Terminal*

4.3.1 This site is at St Andrew’s Road, Bristol BS11 9BN (“the Avonmouth Terminal”); see the satellite image at **[B/10/177]**.

4.3.2 The Avonmouth Terminal primarily serves the southwest of England.

## 4.4 *The Birmingham Terminal*

4.4.1 This site is at Tyburn Road, Birmingham B24 8HJ (“the Birmingham Terminal”): see the satellite image at **[B/11/191]**.

4.4.2 This Birmingham Terminal primarily serves the Midlands.

## 4.5 *The Purfleet Terminal*

4.5.1 This site is at London Road, Purfleet, RM19 1RS (“the Purfleet Terminal”): see the satellite image at **[B/12/226]**.

4.5.2 The Purfleet Terminal comprises a terminal and also a jetty (“the Purfleet Jetty”).

4.5.3 The Purfleet terminal primarily serves London and southeast England.

## 4.6 *The West London Terminal*

4.6.1 This site is at Bedfont Road, Stanwell, Middlesex TW19 7LZ (“the West London Terminal”); see the satellite image at **[B/13/248]**.

4.6.2 The West London Terminal serves a wide range of customers in southern and central England and supplies aviation fuel to Heathrow Airport.

4.7 *The Hartland Park Logistics Hub*

4.7.1 This site is at Ively Road, Farnborough (“the Hartland Park Logistics Hub”); see the satellite image at **[B/14/296]**.

4.7.2 This site comprises a temporary logistics hub which comprises project offices, welfare facilities and car parking for staff and contractors together with storage of construction plant materials, machinery and equipment in connection with the construction of a replacement fuel pipeline between the Petrochemical Complex and the West London Terminal.

4.8 *The Alton Compound*

4.8.1 This site is at the A31, Hollybourne (“the Alton Compound”); see the satellite image at **[B/15/302]**.

4.8.2 This site is a pumping station and another compound being used in connection with the construction of the pipeline referred to in Paragraph 4.7.2 above.

**The Titles to the Sites**

5. The relevant titles in respect of the Sites are as follows:

5.1 *The Fawley Petrochemical Complex*

5.1.1 The Fawley Oil Refinery and the Chemical Plant comprise part of the freehold land registered under title number HP5287836 **[B/9/72]**.

5.1.2 The Chemical Plant is also the subject of the unregistered leasehold interest created by a Lease dated 28 August 1975 for a term of 99 years from 1 January 1971 [**B/9/105**].

5.1.3 The Fawley Jetty is the subject of a registered leasehold title under title number HP528740 created by four Leases dated 14 March 1951, 7 January 1961, 16 April 1956 and 2 December 1968 [**B/9/101**].

## 5.2 *The Hythe Terminal*

5.2.1 The Hythe Terminal comprises another part of the freehold land registered under title number HP5287836 [**B/9/72**].

## 5.3 *The Avonmouth Terminal*

5.3.1 The Avonmouth Terminal comprises the leasehold interest registered under title number BL105954 created by a Lease dated 22 January 2008 for a term of 15 years from 2 January 2007, which is currently the subject of a statutory continuation tenancy under Part II of the Landlord and Tenant Act 1954 [**B/10/120**].

## 5.4 *The Birmingham Terminal*

5.4.1 The Birmingham Terminal is the subject of two registered freehold titles, namely WK118802 [**B/11/183**] and WK66930 [**B/11/186**] and unregistered freehold land.

## 5.5 *The Purfleet Terminal*

5.5.1 That part of the Purfleet Terminal which comprises just the terminal is the subject of two registered freehold titles, namely EX869151 [**B/12/200**] and EX869958 [**B/12/204**], although part of EX869958 has now been sold to Purfleet Real Estate Limited (albeit the sale has not yet

been registered). The title to the Purfleet Jetty is unregistered but the First Claimant has occupied it for around 100 years.

5.6 *The West London Terminal*

5.6.1 The West London Terminal is the subject of five freehold registered title, namely MX232530 [B/13/237], MX442259 [B/13/240], MX440505 [B/13/243], MX219704 [B/13/230] and SY346160 [B/13/233].

5.7 *Hartland Park Logistics Hub*

5.7.1 The Hartland Park Logistics Hub is the subject of an unregistered leasehold interest created by a Lease dated 2 September 2021 made between SHE Manger Limited and SHE Nominee Limited and the First Claimant for a term commencing on 6 September 2021 and 30 September 2024 [B/14/250].

5.8 *The Alton Compound*

5.8.1 The Alton Compound is the subject of a freehold title, SH30798 [B/15/298].

**The Interests of the Claimants in the Sites**

6. The interests of the Claimants in respect of each of these Sites are as follows:

6.1 *The Fawley Petrochemical Complex*

6.1.1 The First Claimant is the freehold owner of the Fawley Oil Refinery and the Chemical Plant, being the registered freehold proprietor in respect of Title No HP5287836 referred to in Paragraph 5.1.1 above [B/9/72].

6.1.2 The Second Claimant is the lessee of the Chemical Plant under the Lease referred to in Paragraph 5.1.2 above.

6.1.3 The First Claimant is the registered lessee of the Fawley Jetty, being the registered proprietor in respect of Title Number HP528740 referred to in Paragraph 5.1.3 above **[B/9/101]**.

6.2 *The Hythe Terminal*

6.2.1 The First Claimant is the freehold owner of the Hythe Terminal, being the registered freehold proprietor in respect of Title No HP5287836 referred to in Paragraph 5.2.1 above **[B/9/72]**.

6.3 *The Avonmouth Terminal*

6.3.1 The First Claimant is the registered lessee of the Avonmouth Terminal, as the registered leasehold proprietor in respect of Title No BL105954 referred to in Paragraph 5.3.1 above **[B/10/120]**.

6.4 *The Birmingham Terminal*

6.4.1 The First Claimant is the freehold owner of the Birmingham Terminal, being the registered proprietor in respect of Title Numbers WK118802 **[B/11/183]** and WK66930 **[B/11/186]** and the unregistered title referred to in Paragraph 5.4.1 above.

6.5 *The Purfleet Terminal*

6.5.1 The First Claimant is the freehold owner of the Purfleet Terminal, being the registered freehold proprietor in respect of Title Numbers EX869151 **[B/12/200]** and EX869958 **[B/12/204]**, save for that part of EX869958 has now been sold (and as referred to in Paragraph 5.5.1 above).

6.6 *The West London Terminal*

6.6.1 The First Claimant is the freehold owner of the West London Terminal, being the registered freehold proprietor in respect of title numbers MX232530 [B/13/237], MX442259 [B/13/240], MX440505 [B/13/243], MX219704 [B/13/230] and SY346160 [B/13/233] (as referred to in Paragraph 5.6.1 above).

6.7 *Hartland Park Logistics Hub*

6.7.1 The First Claimant is the lessee of the Hartland Park Logistics Hub, lessee under the Lease referred to in Paragraph 5.7.1 above [B/14/250].

6.8 *The Alton Compound*

6.8.1 The First Claimant is the freehold owner of the Alton Compound, being the registered proprietor in respect of title number SH30798 [B/15/298].

7. The First Claimant is also the owner or lessee (as the case may be) of such of the airspace over these sites as is necessary for the use of these sites. The Second Claimant is the lessee over such of the airspace over the Fawley Chemical Plant as is necessary for the use of that site.

**The Plans**

8. The Sites are shown in the following plans:

8.1 *The Fawley Plan*

8.1.1 This extent of the First Claimant's freehold ownership of the Fawley Oil Refinery and the Fawley Chemical Plant are shown red on the plan at [B/4/18] ("the Fawley Plan").

8.1.2 The extent of the Second Claimant's demise of the Chemical Plant is shown purple on the Fawley Plan.



8.1.3 The extent of the First Claimant's demise of the Fawley Jetty is shown green on the Fawley Plan.

8.2 *The Hythe Plan*

8.2.1 The extent of the First Claimant's freehold ownership of the Hythe Terminal, is shown edged red on the plan at [B/4/19] ("the Hythe Plan").

8.3 *The Avonmouth Plan*

8.3.1 The extent of the First Claimant's demise of the Avonmouth Terminal is shown edged red on the plan at [B/4/20] ("the Avonmouth Plan").

8.4 *The Birmingham Plan*

8.4.1 The extent of the First Claimant's freehold ownership of the Birmingham Terminal is shown edged red and the First Claimant's unregistered interest is showed edged brown on the plan at [B/4/21] ("the Birmingham Plant").

8.5 *The Purfleet Plan*

8.5.1 The extent of the First Claimant's freehold ownership of the Purfleet Terminal, is shown edged red and the First Claimant's unregistered interest in the Purfleet Jetty is showed edged brown on the plan at [B/4/23] ("the Purfleet Plan").

8.6 *The West London Plan*

8.6.1 The extent of the First Claimant's freehold ownership of the West London Terminal is shown edged red on the plan at [B/4/25] ("the West London Plan").

## 8.7 *Hartland Park Logistics Hub*

8.7.1 The extent of the First Claimant's demise of the Hartland Park Logistics Hub is shown edged red on the plan at [B/4/26] ("the Hartland Park Plan").

## 8.8 *The Alton Compound*

8.8.1 The extent of the First Claimant's freehold ownership of the Alton Compound is shown edged red on the plan at [B/4/27] ("the Alton Compound Plan").

## **The Campaigns**

9. There are three campaigns in respect of which there has now been direct protest action affecting some of the Site and further apprehended direct protest action:

9.1 'Extinction Rebellion' is an established protest campaign, which promotes the use of civil disobedience with a view to influencing government policy.

9.2 'Just Stop Oil' is newer protest campaign, the target of which is to end the use of fossil fuels in the UK.

9.3 The 'Just Stop Oil' campaign also incorporates 'Youth Climate Swarm', which is specifically for 'Just Stop Oil' activists under the age of 30, the target again being to end the use of fossil fuels in the UK.

10. Over recent months, there have been indications of potential threats of trespass and acts of nuisance in relation to the campaigns referred to above:

10.1 In relation to the 'Just Stop Oil' campaign:

10.1.1 The website for this campaign provided the following information [B/19/381]:

*“In March and April 2022, 1000s of people all round the country will be taking action to force the Government to take action against the fossil fuel industry. Hundreds of meetings are happening and the whole thing is taking off”*

10.1.2 Reference was made to the following phases of activity **[B/19/397]**:

*“March onwards*

*Phase 1 In March 2022 teams will block the oil networks to demand that the government Just Stop Oil. They will block oil refineries, storage units, and adjacent motorways.*

*Phase 2A Teams will block petrol stations in the South-East. Many people will do sit-ins, sitting on the ground in the forecourt. Others will do tanker-surfing and spray paint filling points.*

*Phase 2B High stakes resistance against oil”*

10.1.3 The first page of the website encouraged individuals to sign up and formally pledge *“to take part in action which will lead to my arrest, at least once, in late March”* **[B/19/379]**.

10.1.4 In a ‘Just Stop Oil’ presentation in Falmouth in January 2022 given by Dr Larch Maxey (aka Ian Maxey), he explained that ‘Just Stop Oil’ would be training activists in civil resistance during February 2022, that they would be encouraging disruption to the oil economy and that they would engage in disruptive activity in March 2022 before handing over to ‘Extinction Rebellion’ which, it was indicated, would continue the disruption in April 2022: see paragraph 9.22 of the Witness Statement of Anthony Milne **[B/17/318]**.

10.1.5 On 14 February 2022, Louis McJechnie and Hannah Hunt, as representatives of ‘Just Stop Oil’ delivered an ‘ultimatum’ in person to the UK Government stating that unless the UK Government ceased the licensing of oil projects by 14 March 2022 protests would commence shortly thereafter: **[B/31/572]**.

10.2 In relation to ‘Extinction Rebellion’:

10.2.1 Their website referred to the “Next UK Rebellion” and indicated that in April 2022 they proposed “*one aligned action plan, rather than having a scattergun approach across several different targets, in order to have the most impact*”: see paragraph 9.25 of the Witness Statement of Anthony Milne [B/17/319].

### **The Direct Action between 1 to 4 April 2022**

11. Between 1 and 4 April 2022, four of the Sites (Hythe, Birmingham, Purfleet and West London) all experienced disruptive protest activity as a part of a wider campaign disrupting a total of ten oil terminals in the UK: see the press articles at [B/17/400ff]. Both Extinction Rebellion and Just Stop Oil claimed involvement in the protest activity.
  
12. Details of the direct action are set out at paragraphs 8.1 to 8.8 of the Witness Statement of Anthony Milne dated 3 April 2022 [B/17/312-314] and in the Witness Statement of Stuart Sherbrooke Wortley dated 4 April 2022 [B/7/47-48]. The effect of the activities was to cause operations and customer access to cease at four of the First Claimant’s terminals and for pipeline transportation of fuel from the Petrochemical Complex to the West London Terminal to temporarily cease.

### **The Further Apprehended Threats in respect of the Sites**

13. The Claimants perceive further apprehended threats in respect of the Sites. Due to the fact that the ‘Just Stop Oil’ website indicates that “*they will block oil refineries, storage units*”, the sites for which it has been considered appropriate to apply for injunctive relief include the Fawley Oil Refinery (with the associated Chemical Plant) and various terminals. In addition, for reasons set out below, the Hartland Park Logistics Hub and the Alton Compound are included. Specifically, the following evidence points to the following risks at the following sites:

#### 13.1 *The Fawley Petrochemical Complex*

- 13.1.1 There have already been incidents affecting the Fawley Petrochemical Complex. On 28 October 2021 ‘Extinction Rebellion’ trespassed and

protested at the Fawley Petrochemical Complex. The activities involved perimeter fencing being cut, alarms being activated, storage tanks being climbed upon and an access gate being blocked [B/17/315].

13.1.2 Given that the ‘Just Stop Oil’ website specifically refers to the proposed blocking of oil refineries, the Fawley Petrochemical Complex would appear to be at risk. It is the largest oil refinery in the UK and provides 20% of UK refinery capacity. It also supplies fuel by pipeline directly to Heathrow and Gatwick airports.

### 13.2 *The Hythe Terminal*

13.2.1 As explained above, there has been the incident on 1 April 2022 at this site. There was also a previous incident affecting the Hythe Terminal. On 19 August 2021 ‘Extinction Rebellion’ organised a protest at this site. This involved a trespass on the site, with a group of around ten protestors erecting two tripods on New Road, thereby preventing access to the and from the terminal operations for around 8 hours [B/17/315].

13.2.2 Given that the ‘Just Stop Oil’ website specifically refers to the proposed blocking of storage units, the Hythe Terminal would appear to be at specific risk of direct action.

### 13.3 *The Avonmouth Terminal, the Birmingham Terminal, the Purfleet Terminal and The West London Terminal*

13.3.1 Three of these terminals were the subject of direct action that took place between 1 and 3 April 2022.

13.3.2 Given that the ‘Just Stop Oil’ website specifically refers to the proposed blocking of storage units, these Terminals would appear to be at specific risk of further protest action.

### 13.4 *Hartland Park Logistics Hub*

13.4.1 There is a particular concern in respect of this site arising from the logistical importance of the site.

13.5 *The Alton Compound*

13.5.1 There has been an earlier incident affecting this site. On 19 December 2021, 4 members of Extinction Rebellion cut through the fence at this compound and caused extensive damage: [B/17/316].

**The Nature of the Activities – Trespass and Nuisance**

14. *Trespass*

14.1 The entry, without permission or consent of the First Claimant (or the Second Claimant in relation to the Chemical Plant), upon the Sites is a clear trespass.

14.2 So too, there would be a continuing trespass by remaining upon such site(s) without the appropriate consent.

15. *Private Nuisance*

15.1 In relation to nuisance, a private nuisance is an “*act or omission which is an interference with disturbance or of annoyance to, a person in the exercise or enjoyment of ... his ownership or occupation of land or of some easement, profit other right used or enjoyed in connection with the land:*” *Clerk & Lindsell ‘Law of Torts’ 23<sup>nd</sup> Ed at paragraph 19-01 [AB/16/323]*. The same paragraph also states that “[t]he essence of a nuisance is a condition or activity which unduly interferes with the use or enjoyment of land”. It is clear law that an owner of land has a private right to gain access to the highway which is separate from the right to the use of the highway as a member of the public. This is referred to paragraph 19-181 of *Clerk & Lindsell on Torts [AB/16/324]* (and see paragraph 42 of the judgment of Morgan J in the *Ineos* case referred to below ([2017] EWHC Ch 2945) [AB/5/62]).

- 15.2 The specific acts of nuisance which have arisen and which are threatened in this case involve obstructions at the accesses to the Sites so as to prevent the employees, contractors, servants, agents or licensees of the First Claimant (or those of the Second Defendant in the case of the Chemical Plant) from entering or exiting from the Sites.

### **The Apprehended Effects of the Threatened Acts of Trespass and Nuisance**

16. A variety of consequences arise in respect of the type of direct action which has been experienced and is apprehended, as set out in paragraphs 10.2 and 11.3 to 11.6 of the Witness Statement of Anthony Milne dated 3 April 2022 [B/17/321-322]:

- 16.1 The operations at the various sites can involve use for the production and storage of highly flammable and otherwise hazardous substances. The Fawley Petrochemical Complex and each of the Terminals are regulated under the Control of Major Accident Hazards Regulations 2015 by the Health and Safety Executive. As one would expect, access to these sites is very strictly controlled.
- 16.2 Whereas the relevant employees of the Claimants are appropriately trained and where appropriate are provided with protective clothing and equipment, the protestors do not understand the hazards, are untrained and unlikely to have the appropriate protective clothing or equipment. There are therefore risks in respect of personal injury and health and safety.
- 16.3 The Claimants have important contractual obligations to customers which have to be fulfilled in order to ‘keep the country moving’, including road, rail and air travel. There is a clear risk of disruption to the Claimants’ operations and the subsequent impact upon the UK’s downstream fuel resilience.

### **The legal principles applicable to the relief sought**

#### ***The starting point – the test in American Cyanamid***

17. The starting point is the first stage of the test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, namely that there must be a serious issue to be tried with respect to the Claimants’ case.

18. It must also be the case damages would not be an adequate remedy.
19. In relation to the ‘balance of convenience, there are more complex principles to be applied in this type of case, the relevant sub-principles of which are set out below.

***The balancing exercise - Articles 10 and 11 of the European Convention of Human Rights***

20. Articles 10 and 11 provide as follows [AB/1/8]:

Article 10

- “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers...
- (2) The exercise of these freedom, since it carries with duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as re prescribed by law and are necessary in a democratic society, in the interests national security, territorial integrity or public safety, for the prevention of disorder of crime, for the protection of health or morals, for the protection of the reputation of rights of other, for preventing the disclosure of information received in confident, for maintaining the authority and impartiality of the judiciary.

Article 11

- “(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights and freedoms of others. This Articles shall not prevent the exercise of the rights by members of the armed forces, or the police or the administration of the State.”

21. Both Articles confer qualified, rather than absolute rights. Both Articles are qualified in relation to matters which involve public safety, matters needed for the prevention of disorder or crime and for the protection of the rights of others.



22. Whether the Articles do confer any right to carry on direct protest activity in a particular case will depend upon whether the rival rights qualify Articles 10 and/or 11. In order to do so, they must be:
- Prescribed by law
  - Pursue one or more of the legitimate aims specified in Article 10(2) or 11(2), as the case may be
  - Necessary in a democratic society.
23. In *DPP v Ziegler* [2019] EWHC 71 (Admin) at [64], the questions posed were as follows [**AB/9/159**]:
- (1) Is the aim sufficiently important to justify interference with a fundamental right
  - (2) Is there a rational connection between the means chosen and the aim in view?
  - (3) Are there less restrictive alternative means available to achieve that aim?
  - (4) Is there a fair balance between the rights of the individual and the general interests of the community, including the rights of others?
24. One of the early authorities which set the scene for some of the more recent cases on protest cases was that of *City of London v Samede* [2012] PTSR 1624 in which the Court of Appeal refused permission to appeal to a group of protestors against a possession order and an injunction requiring their removal from St Paul's Churchyard [**AB/4**]. The protestors relied on Articles 10 and 11 and submitted that the judge had reached the wrong conclusion when carrying out the balancing exercise requires by Articles 10 and 11. Lord Neuberger MR (giving the judgment of the court) said at [49]:
- “... The essential point in the Hall case and in this case is that, while the protestors’ Article 10 and 11 rights are undoubtedly engaged, it is very difficult to see how they could ever prevail against the will of the landowner when they are continuously and exclusively occupying public land, breaching not just the owner’s property rights and certain statutory provisions, but significantly interfering with the public and Convention rights of others, and causing other problems (connected with health, nuisance and the like), particularly in circumstances where the occupation has already continued for months, and is likely to continue indefinitely”

Similarly, in *DPP v Cuciurean* [2022] EWHC 736 (Admin), the Divisional Court found at [45] and [76]-[77] that **[AB/15/313 and 319-320]**:

“We conclude that there is no basis in the Strasbourg jurisprudence to support the respondent's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg Court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at [47] and [52] ). There is no right of entry to private property or to any publicly owned property. The furthest that the Strasbourg Court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of destroying the essence of those rights, then it would not exclude the possibility of a State being obliged to protect them by regulating property rights.

...

Thirdly, a protest which is carried out for the purposes of disrupting or obstructing the lawful activities of other parties, does not lie at the core of articles 10 and 11, even if carried out on a highway or other publicly accessible land. Furthermore, it is established that serious disruption may amount to reprehensible conduct, so that articles 10 and 11 are not violated...

Fourthly, articles 10 and 11 do not bestow any "freedom of forum" to justify trespass on private land or publicly owned land which is not accessible by the public..."

25. There have been several authorities relevant to the scope of injunctions against “persons unknown”, some of the more recent of which have included *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 5151 **[AB/8]**, *Canada Goose Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 **[AB/11]**, *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9 **[AB/12]**, all of which have recently been reviewed in the context of final injunctions by the Chancellor, Vos J in *Barking and Dagenham LBC v Persons Unknown* [2021] EWCA Civ 13 **[AB/14]**. For present purposes, reference is made below to a few of the cases involving protest situations involving potential trespasses and obstructions of access to operational sites.
26. In *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515, the claimant companies undertook fracking and obtained interim injunctions restraining unlawful protesting

activities such as trespass and nuisance against persons unknown. At first instance ([2017] EWHC Ch 2945), Morgan J said at [105] **[AB/5/79]**:

“In the present case, if a final injunction were sought on the basis of the evidence presented on this interim application, the court is (to put it no higher) likely to grant an injunction to restrain the protestors from trespassing on the land of the claimants. The land is private land and the rights of the claimants in relation to it are to be given proper weight and protections under Articles 10(2) and 11(2). The claimants’ rights are prescribed by law, namely the law of trespass, and that law is clear and predictable. The protection of private rights of ownership is necessary in a democratic society and the grant of an injunction to restrain trespass is proportionate having regard to the fact that the protestors are free to express their opinions and to assemble elsewhere. There would also be concerns as to safety in the case of trespass on the claimants’ land at a time when the land was an operational site for shale gas exploration.

I take the same view as to the claim in private nuisance to prevent a substantial interference with the private rights of way enjoyed in relation to Sites 3 and 4. I would not distinguish for present purposes between the claim in trespass to protect the possession of private land and the claim in private nuisance to protect the enjoyment of a private right of way over private land.”

27. This test was considered by Mr Justice Barling in relation to HS2 protests in *Secretary of State for Transport v Persons Unknown* [2018] EWHC 1404 (Ch) at [58] where he said **[AB/6/106]**:

“In my view the claimants have clearly surmounted the American Cyanamid hurdle in all respects, both as to the seriously arguable case and as to the inadequacy of any relief in damages. With respect to the higher hurdle that applies in the present case, I also consider, in the light of the material before me, that it is likely at trial that the claimants would succeed in obtaining the kind of protective orders that they seek, both in relation to the application for trespassory injunction and the application for an injunction in respect of activities in or about the entrance compounds, north and south. I make these findings having carried out the balancing exercise which is appropriate given that Articles 10 and 11 are engaged here. The defendants are undoubtedly exercising their freedoms of expression and assembly in protesting as they have done (and will in all likelihood continue to do) about the activities carried out on this site. However, in my view the balance very clearly weighs in favour of granting relief because the defendants’ right to protest and to express their protest both by assembling and by vociferating the views that they hold, can be exercised without trespassing on the land and without obstructing the right of the claimants to come in and out of the land from and on to the public highway. What the defendants seek to do by carrying out these activities goes beyond the exercise of the undoubted freedoms of expression and assembly, what they wish

to do, as well as protesting, is to slow down, or stop, or otherwise impede the work being carried out. Whilst a legitimate process might encompass an element of pressure, so that how we protest and how far we are allowed to go in protesting about something which we do not agree, may involve a difficult balance and assessment, here the defendants have clearly treated being what those qualified rights under the Convention entitles them to do. I consider that in all the circumstances the balance of convenience favours the grant of relief, and that is just and convenient for me to do so.”

28. A similar approach was applied by Mr David Holland QC (sitting as a Deputy Judge) when the injunction was renewed ([2019] EWHC 1437 (Ch) at [127] [AB/10/199] and also in *UK Oil & Gas v Persons Unknown* [2021] EWHC 599, where the claimant applied for a variation and continuation of an interim injunction previously granted in 2018 in relation to a protest concerning the oil and gas industry and the injunction granted prevented the persons unknown from entering or remaining upon one of the claimant’s sites, from climbing on to vehicles or trailers coming out of the site and from obstructing a particular entrance and thereby preventing the claimants, their contractors, agents and servants from entering. Mrs Justice Falk said at [54] [AB/13/269]:

“Having regard to the revised scope of the injunction, which is very narrowly focused on people actually trespassing on the site, people climbing onto vehicles seeking access to or coming from the site , and obstructing the entrance to the site in a way that prevents people or vehicles coming into and out of the site, I am satisfied that in the narrowed manner there is a fair balance being struck between the rights of individuals and the rights of the Claimants to go about their lawful business”

### ***Section 12 Human Rights Act 1998***

29. In addition, consideration must be given to section 12 of the Human Rights Act 1998 [AB/1/5]. It provides:

- “(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied-
- (a) that the applicant has taken all practicable steps to notify the respondent;  
or

- (b) that there are compelling reasons why the respondent should not be notified.
  - (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
  - (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary, or artistic material (or to conduct connected with such material) to
    - (a) the extent to which-
      - (i) the material has, or is about to, become available to the public, or
      - (ii) it is, or would be, in the public interest for the material to be published;
    - (b) any relevant privacy code.”
30. It is noted that section 12(3) refers to “publication”. Nevertheless, it was the case that section 12(3) was applied by the Court of Appeal in the case of *Boyd v Ineos Upstream Limited & Others* [2019] EWCA Civ 515 at [48] to a case concerning trespasses, private nuisance, public nuisance and causing loss by way of unlawful means [AB/8/142]. Thus, although the Claimant reserves the right to argue the point, if necessary, in future, at first instance the Claimant proceeds on the basis that section 12(3) applies. Lord Nicholls in *Cream Holdings Cream Holdings Ltd v Bannerjee* [2004] UKHL 44 at [22]-[23] explained that the “general” interpretation of “likely” in section 12(3) as meaning “more likely than not” had to be modified in circumstances which include where “*the adverse consequences of disclosure are particularly grave*” [AB/3/26]. In this case, it is submitted that “the more likely than not” test is satisfied. Alternatively, it is submitted that the adverse consequences of the threatened activities are “*particularly grave*” which would justify a departure from the “more likely than not” test.

***Injunctions against ‘persons unknown’***

31. In *Boyd v Ineos Upstream* [2019] EWCA Civ 515 (“Ineos”) [AB/8] Lord Justice Longmore set out various requirements that must be satisfied in order to grant an injunction against Persons Unknown and these were developed further in *Canada*

*Goose Retail Ltd v Persons Unknown* [2020] EWCA Civ 303 [AB/11] and in *Barking and Dagenham LBC v Persons Unknown* [2021] EWCA Civ 13 [AB/14]. In summary, the principal substantive requirements can be summarised, for present purposes, as follows:

- (a) There must be a sufficiently real and imminent risk of a tort being committed to justify *quai timet* relief;
- (b) It is impossible to name the persons who are likely to commit the tort unless restrained;
- (c) It is possible to give effective notice of the injunction and for the method of such notice to set out in the order;
- (d) The terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit unlawful conduct
- (e) The terms of the injunction must be sufficiently clear and precise to enable persons potentially effected to know what they must not do; and
- (f) The injunction should have clear geographical and temporal limits.

32. In relation to the first requirement, Sir Terence Etherton Mr in *Network Rail Infrastructure Ltd v Williams* [2018] 3 WLR 1105 said the following about the grant of a pre-emptive injunction at [71] [AB/7/128]:

“It is usually said that there must be proof of imminent physical harm for a *quia timet* injunction to be granted: *Fletcher v Bailey* (1885) 28 Ch D 688 at 698; *Birmingham Development Co Ltd v Tyler* [2008] EWCA Civ 859; [2008] BLR 445 at [45]; *Islington LBC v Elliott* [2012] EWCA Civ 57; [2012] 1 WLR 1275 at [29]. It is possible, however that that is too prescriptive and that what matters is the probability and likely gravity of damage rather than simply its imminence: *Hooper v Rogers* [1973] 1 Ch 43 at 30; *Islington LBC v Elliott* at [31], quoting Chadwick LJ in *Lord v Symonds* [1998] EQCA Civ 511 at [33]-[34], [36]; D Nolan ‘Preventative Damages’ (2016) 132 LQR 68-95.”

33. In *Hooper v Rogers* [1975] Ch 43 per Russell LJ said at p.50B that the word “imminent” “is used in the sense that the circumstances must be such that the reedy sought is not premature” [AB/2/16].

## **The Grounds for the Application**

34. Against the background of the principles and authorities referred to above, it is submitted that the relief sought to restrain the threatened trespass(es) and acts of nuisance is justified on the following grounds:

34.1 *There is a serious issue to be tried*

There is strong evidence that, if the injunction was not granted, there would be further acts of trespass and acts of nuisance: see paragraphs 9-12 above.

34.2 *Damages would not be an adequate remedy*

It would also be the case that damages would not be an adequate remedy. The risks which arise in this case involve serious health and safety risks as well as financial risks in the event that the proposed protests involve operational disruptions. These damages are unquantifiable and there is a risk that none of the Defendants would be able to pay such damages: see paragraph 12.3 of the Witness Statement of Anthony Milne dated 3 April 2022 [B/17/323].

34.3 *Articles 10 and 11*

To adopt the words of Mr Justice Barling in *Secretary of State for Transport v Persons Unknown* [2018] EWHC 1404 (Ch) at [58] in relation to this case, the facts are such that “*the balance very clearly weighs in favour of granting relief because the defendants’ right to protest and to express their protest both by assembling and by vociferating the views that they hold, can be exercised without trespassing on the land and without obstructing the right of the claimants to come in and out of the land from and on to the public highway.*” [AB/6/106]

34.4 *The requirements of section 12 Human Rights Act 1998 are satisfied*

For the purposes of section 12 Human Rights Act 1998(2), the Court can be satisfied that the Claimants have taken all practicable steps to notify the Defendants. For the purposes of section 12(3), the Court can be satisfied that the Claimants are likely to establish the case for trespass and nuisance at trial.

34.5 Each of the elements of the test for pre-emptive relief against persons unknown is satisfied:

34.5.1 *There is a sufficiently real and imminent risk of a tort being committed*

For the reasons set out in Paragraphs 9-12 above, it is submitted that this element of the test is satisfied with respect to each of the Sites and the Chemical Plant.

34.5.2 *It is impossible to name the persons who are likely to commit the tort unless restrained*

The nature of the proposed trespass means that there will potentially be a large number of different individuals trespassing and it is not possible to discover their identities.

34.5.3 *It is possible to give effective notice of the injunction and for the method of such notice to be set out in the order*

It is possible in this case to give effective notice. The Order can be served by affixing it to prominent positions at the Sites and the Chemical Plant, in order to ensure that it comes to the attention of any person who is in close proximity, and in various other ways. The methods of service which are proposed in the draft Order are referred to in Paragraph 35 below.

34.5.4 *The terms of the injunction must correspond with the threatened tort and not be so wide that they prohibit lawful conduct*

The forms of relief in the first two injunctions set out in the draft Order sought would prohibit the Defendants from entering or remaining upon the sites in question or causing damage or affixing themselves or items thereto or erecting structures thereon. The third form of relief seeks to prohibit the Defendants from obstructing the rights of access to and egress from the Sites.

34.5.5 *The terms of the injunction must be sufficiently clear and precise as to enable persons potentially effected to know what they must not do*

The terms of the injunction sought are precise. It is submitted that it will be obvious to all persons what activities they are prohibited from undertaking, namely entering or remaining upon the identified sites,



causing damage, affixing people or objects to the Sites, erecting structures on them and obstructing the accesses to and exits from the Sites: see, for example, the order at *Ineos* [36]-[37] [AB/8/140].

34.5.6 *The injunction should have clear geographical and temporal limits*

The prohibition is clearly defined by reference to the specific sites, the geographical location of which is identified by their address and the accompanying plans. In relation to the temporal limits, a return date is proposed in the first instance. A 2 year period will be sought in relation to the final injunction. It is submitted that this would strike the appropriate balance. If the period was longer than this, it might be considered disproportionate and if it was shorter, this might entail further unnecessary costs and court resources if there is a need to renew it.

### **Undertaking in Damages**

35. In the Witness Statement of Anthony Milne dated 3 April 2022, evidential confirmation is provided of the necessary cross-undertaking to pay damages: paragraphs 13.2 to 13.3 [B/17/323]. For the reasons set out in the same Witness Statement, no issue arises as to the ability of the Claimants to satisfy any such cross-undertaking.

### **Service**

36. The methods by which it is proposed to serve the Order and the Court documents (namely the Claim Form, the Particulars of Claim, Response Pack, the Application Notice dated 4 April 2022, the Witness Statement of Stuart Sherbrooke Wortley dated 4 April 2022, the Witness Statement of Anthony Milne dated 3 April 2022, an Application Notice in respect of the return date hearing) in this case and for which the Claimants seek an order for service by an alternative method pursuant to CPR 6.15 and 6.27 are as follows:

- 36.1 fixing copies thereof in clear transparent sealed envelopes at a minimum number of 2 locations on the perimeter of each of the Sites together with a notice which

states (a) that copies of the Order and the Court documents may be obtained from the Claimants' solicitors, Eversheds Sutherland (International) LLP, One Wood Street, London EC2V 7WS (Ref: Stuart Wortley tel: 020 7919 0969) email:exxonmobil.service@eversheds-sutherland.com and (b) that copies of the Order and the Court documents may be viewed at the website referred to in Paragraph 36.2 below;

36.2 posting the Order and the Court documents on the following website: <https://www.exxonmobil.co.uk/Company/Overview/UK-operations>;

36.3 fixing copies of a large warning notice around the perimeters of the Sites and the Chemical Plant explaining:

- the existence and nature of this Order
- the existence of the proceedings
- the potential consequences of breaching the Order
- the address at which copies of the proceedings can be obtained
- details of the website at which the injunction can be viewed.

36.4 sending an email to each of the following email addresses with the information that copies of the Order and the Court documents may be viewed at the specific website referred to at Paragraph 36.2 above:

(a) [xr-legal@riseup.net](mailto:xr-legal@riseup.net)

(b) [juststopoil@protonmail.co.uk](mailto:juststopoil@protonmail.co.uk)

### **Conclusion**

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

**KATHARINE HOLLAND QC**  
**YAASER VANDERMAN**  
**Landmark Chambers**  
**4 April 2022**