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Neutral Citation Number: [2021] EWHC 599 (Ch)



IN THE HIGH COURT OF JUSTICE

No. PT-2018-000160

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (Ch)

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Tuesday, 9 February 2021

Before:

MRS JUSTICE FALK

B E T W E E N :

- (1) UK OIL & GAS PLC  
(PREVIOUSLY KNOWN AS UK OIL & GAS INVESTMENTS PLC)
- (2) UKOG (234) LIMITED  
(PREVIOUSLY KNOWN AS KIMMERIDGE OIL & GAS LIMITED)
- (3) MAGELLAN PETROLEUM (UK) LIMITED
- (4) HORSE HILL DEVELOPMENTS LIMITED
- (5) UKOG (GB) LIMITED

Claimants

- and -

PERSONS UNKNOWN WHO ARE PROTESTORS AGAINST THE EXPLORATION  
AND/OR EXTRACTION OF MINERAL OIL OR RELATIVE  
HYDROCARBON OR NATURAL GAS BY THE CLAIMANT(S) AND WHO ARE INVOLVED  
IN SPECIFIED ACTS

- (7) MS ANN STEWART
- (8) MS SUE JAMESON

- (9) MS NATASHA DOANE  
(10) MS VICKI ELCOATE  
~~(11) MS CONSTANCE WHISTON~~  
(12) MS JACQUI HAMLIN  
~~(13) FRIENDS OF THE EARTH LIMITED~~  
(14) SCOTT BREEN  
(15) MAVIS MACDUFF (ALSO KNOWN AS “CHRISSEY” OR “CHRISSIE”)  
(16) ROZ AROO

Defendants

- (17) ROSS MONAGHAN  
(18) PETER WHITTICK (ALSO KNOWN AS “DAVE DOKTOR”)  
(19) TOM SMITH JUNIOR  
(20) CALLUM EDEN (ALSO KNOWN AS “CALLIE RIVIERA”)  
(22) GILLIAN FLETCHER  
(23) STEVE DUNN-LOWES  
(24) VENETIA CARTER  
(25) MARGARET MULOWSKA  
(26) CHRISTOPHER SMITH  
(27) SIMON SINCLAIR  
(28) ALISTAIR SANDELL  
(29) LINDSAY PARKIN

Proposed Further Defendants

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**J U D G M E N T**

**(Via Microsoft Teams)**

**A P P E A R A N C E S**

MR T. POLLI QC (instructed by Hill Dickinson LLP) appeared on behalf of the Claimants.

MS S. HARRISON QC and MR S. SIMBLET QC (instructed by Bhatt Murphy) appeared on behalf of the 7<sup>th</sup> to 12<sup>th</sup> Defendants.

MR S. CLARK (of Counsel) appeared on behalf of the 28<sup>th</sup> and 29<sup>th</sup> Defendants.

NO OTHER DEFENDANTS attended or were represented.

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MRS JUSTICE FALK:

1 The Claimants in these proceedings are oil and gas companies who are involved in an enterprise seeking to extract oil and gas in certain areas of Surrey and West Sussex, and in particular for the purposes of this hearing at a site in Surrey called “Horse Hill”. The Claimants’ activities have attracted protest, much of which has been lawful but some of which has involved trespass to property, obstruction of access to and from the site, and so-called lorry surfing.

2 I need to make clear at the outset that I have no doubt that the actions that have been taken are promoted by genuine concerns about the environmental impact of the Claimants’ activities and more broadly about the continued use of fossil fuels. It is no part of the court’s role to prevent or hinder the expression of such views in a proper manner, indeed rather to the contrary. In very broad terms, the court’s role is to ensure that an appropriate balance is achieved between the ability to express opposition to the activities and the Claimants’ own private law rights.

3 This decision relates to the following applications:

(1) an application dated 7 February 2020 to join 116 persons as defendants in these proceedings. Those persons include seven individuals to whom I will refer as Defendants 17 to 23;

(2) an application sealed on 24 January 2021 (incorrectly dated 22 February) to join six additional defendants, to whom I will refer as Defendants 24 to 29;

(3) an application dated 2 February 2021 for an existing interim injunction to apply to eight of the proposed additional defendants, being Defendants 22 to 29; and

(4) an application dated 20 March 2020 by existing Defendants 7 to 12 to strike out or for summary judgment in respect of the entire proceedings, or alternatively to

discharge or vary the interim injunction that is currently in place, relying in particular on the Court of Appeal decision in *Canada Goose UK Retail Limited & Another v Persons Unknown* [2020] EWCA Civ. 303 (“*Canada Goose*”).

### **Procedural history**

- 4 Proceedings were first issued on 1 March 2018. The Claimants sought an injunction against “persons unknown”, initially in six different categories, although the fifth of those categories was not pursued from an early stage. Defendants 7 to 12 are local residents who engage in lawful protest against the Claimants’ activities. The Claimants have never sought relief against Defendants 7 to 12, but they became parties by applying to be joined, prompted by concerns that any injunction granted could impact on their activities. The Claimants say that these defendants, who have been represented throughout, have effectively litigated on behalf of other defendants, although I will record that I found the submissions of Ms Harrison (who appears on behalf of those defendants) to be of assistance. Friends of the Earth were also joined at an earlier stage as Defendant 13.
- 5 An interim injunction was granted on 3 September 2018 against Defendants 1 to 4, being categories of persons unknown, by John Males QC (sitting as a Deputy High Court Judge). It was varied and restated against those defendants and against additional Defendants 14 to 16 on 27 November 2018 after protests at the Horse Hill site in which those Defendants were involved. Defendants 7 to 12 and 13 sought to appeal both injunctions, obtained permission to appeal but then decided not to pursue their appeals in May 2019, about a month before they were due to be heard. This was after the Court of Appeal had handed down its judgment in *Boyd & Another v Ineos Upstream Limited & Others* [2019] 4 WLR 100 (“*Ineos*”). Defendants 11 and 13 subsequently ceased to participate in the proceedings.

- 6 On 7 February 2020, the Claimants made the application already referred to to join additional defendants. On 19 February 2020, Chief Master Marsh made an order for service of that application by a variety of alternative methods including communication by Facebook, uploading documents to a publicly available Dropbox file, and providing hard copies at a protest camp near Horse Hill. Defendants 7 to 12 have objected to aspects of that order for alternative service, which the Claimants say have been complied with, but there has been no formal challenge to it.
- 7 In April 2020, Chief Master Marsh determined that Defendants 7 to 12 had *locus* to appear and be heard on the Claimants' applications, and made directions for the applications to be listed and for trial. The trial is currently listed for eight days in February 2022, although I am now ordering that hearing to be vacated and the trial instead to be listed for two days between June and October this year.
- 8 The interim injunction was amended and restated in its amended form on 7 May 2020 with the consent of Defendants 7 to 12, and without prejudice to their strike-out application.

### **Recent procedural developments**

- 9 By a witness statement dated 3 February 2021 made by Mr Kevin Lee, a partner in the Claimants' solicitors (Hill Dickinson LLP), the Claimants have now confirmed that they seek to scale back the scope of the first of the applications that I need to consider. The Claimants now seek to join in total 13 additional defendants, as Defendants 17 to 29. These comprise the six already referred to in the application sealed on 24 January this year and just seven of the 116 referred to in the original February 2020 application.

- 10 In addition, it was confirmed today that the Claimants do not now seek to pursue a claim against Defendant 21. That leaves twelve in total to be added.
- 11 The Claimants' position is that all of these proposed additional defendants have been served with applications to join them either in accordance with the order of the Chief Master dated 19 February 2020, already referred to, or directly to themselves or via solicitors.
- 12 In addition to scaling back the number of defendants sought to be joined, the Claimants also propose that the existing interim injunction originally granted on 3 September 2018, and last amended and restated on 7 May 2020, should be scaled back and that the final injunction claimed in the proceedings should similarly be scaled back. In particular the injunction now sought relates only to the Horse Hill site rather than to another site currently covered by the injunction, a site called Broadford Bridge. Further, relief is no longer sought against the practice of "slow walking", where protestors seek to impede the progress of vehicles travelling to or from the site by walking at a slow rate in front of them. The reduction in the number of defendants reflects the removal of individuals previously identified as having participated in such protests.
- 13 The relief now sought is aimed at the following categories of protester:
- (1) protestors who enter or remain on the Horse Hill site;
  - (2) protestors who climb onto vehicles, or trailers attached to vehicles, that belong to the Claimants, associated group companies, contactors and subcontractors or their respective servants or agents working at or visiting the site (so-called "Protected Persons" under the terms of the draft order); and
  - (3) protestors who obstruct the area of the "bell mouth" entrance to the site and thereby prevent Protected Persons from entering and leaving the site.

14 The names of the defendants now sought to be joined are as follows: Defendant 17, Ross Monaghan; Defendant 18, Peter Whittick (also known as “Dave Doktor”); Defendant 19, Callum Eden; Defendant 20, Thomas Smith; Defendant 22, Gillian Fletcher; Defendant 23, Steven Dunn-Lowes; Defendant 24, Venetia Carter; Defendant 25, Margaret Mulowska; Defendant 26, Christopher Smith; Defendant 27, Simon Sinclair; Defendant 28, Alistair Sandell; and Defendant 29, Lindsay Parkin.

15 Most recently, Defendants 28 and 29 have agreed the terms of a Consent Order with the Claimants, under which they have agreed to give undertakings to each other. The effect of that order will be that Defendants 28 and 29 are joined in the proceedings but further proceedings against them are stayed.

16 It was also confirmed during the hearing today that no interim injunction is being sought against Defendants 17 to 20, who were not covered by the application to extend the interim injunction made on 2 February 2021. So the application to extend the interim injunction is made only in respect of Defendants 22 to 27, who the Claimants say are already within the scope of the injunction as persons unknown.

17 At the hearing there was representation by Mr Polli QC on behalf of the Claimants, Ms Harrison QC on behalf of Defendants 7 to 12, and Mr Clark on behalf of Defendants 28 and 29. No other defendant identified themselves before me or was represented.

### **Recent protests**

18 I must now refer to some relatively recent events at the site. The Claimants say that continued protection of the site is still required. They point to what they say were deliberate breaches of the existing interim injunction on 1 June 2020 involving Defendants 24 to 27,



and on 10 October 2020 involving Defendants 28 and 29. They also rely on a protest on 10 December 2019 involving Defendants 22 and 23. In addition, Mr Lee referred in his recent witness statement to so-called slow walk protests in July, August and October 2020 although, as I mentioned, continuing relief is not now sought in respect of those and I make no further reference to them.

- 19 Insofar as they remain relevant, the events relied on by the Claimants are as follows. On 10 December 2019 the Claimants say that Defendants 22 and 23 obstructed the entrance to the site by “locking on”. This is a method of causing an obstruction by means of a protestor or protestors locking themselves either to a fixed object or, as in this case, to another protestor using a device known as a lock-on device. These defendants were named as additional defendants in the application dated 7 February 2020 and were also named in the application dated 2 February 2021 for the injunction to be extended to cover them.
- 20 On 1 June 2020 two protestors (Defendants 24 and 25) locked on in front of the entrance gates, preventing access to and from the site. On the same day two other protestors (Defendants 26 and 27) trespassed on a drill site compound within the Horse Hill site and climbed on top of a container where they remained for most of the day. Defendants 24 to 27 were all arrested on that day and charged, but the CPS elected to discontinue the charges.
- 21 On 10 October 2020, Defendants 28 and 29 trespassed on the site, climbed up an oil rig and hung a protest banner from it, the effect of which was to cause production to cease for a day. They were arrested and charged with aggravated trespass. I understand that Mr Sandell pleaded guilty and that the charge remains outstanding against Ms Parkin.

22 All of the proposed defendants involved in the events of June and October last year are named in the application sealed on 24 January and the application for the injunction to be extended to them dated 2 February 2021.

### **Case law developments**

23 During the period the injunction has been in force there have also been some important case law developments. At the time the initial injunction was granted, the judge granting it had available to him the first instance decision in *Ineos Upstream Limited & Others v Persons Unknown* [2017] EWHC 2945 (Ch) but not the Court of Appeal decision in that case. Since the Court of Appeal decision in *Ineos*, the court has returned to the topic twice more in *Cuadrilla Bowland Limited & Others v Persons Unknown* [2020] EWCA Civ. 9 and shortly afterwards in *Canada Goose*.

24 I should record that although the terms of the injunction initially granted in this case reflected to some extent the injunction granted at first instance in *Ineos*, the Claimants' position is that the scope of the injunction has not been shown to be inappropriate by the Court of Appeal decision in *Ineos*, because in that case purely *quia timet* relief was sought, in other words relief where no wrongs had already occurred. The Claimants say that in this case wrongs (for example, trespass on the site and obstruction of the entrance) had already occurred and that this is a distinguishing feature. They say that the changes they are now proposing are not forced on them by case law developments but rather reflect changed factual circumstances. I do not understand this to be accepted by Defendants 7 to 12 but it is not necessary for me to determine the point.

25 Instead I must make a decision on the applications in front of me today, as they are now formulated. It is worth emphasising in that context that the Court of Appeal decision in

*Canada Goose* is now the leading authority. In a judgment of the court, two categories of potentially unknown defendants were identified by reference to Lord Sumption's judgment in *Cameron v Liverpool Victoria Insurance Co. Limited* [2019] 1 WLR 1471. The first comprises anonymous defendants who are identifiable but whose names are unknown, such as squatters occupying a particular property. The second category comprises defendants who are not only anonymous but cannot be identified. The crucial distinction between these categories is that it is possible in principle to locate or communicate with the first category but not the second. The distinction is critical to the possibility of service both of proceedings and court orders.

26 The Court of Appeal in *Canada Goose* then considered a third category, namely people who will or are highly likely in the future to commit an unlawful civil wrong and against whom a *quia timet* injunction is sought (see paras.60-63). The Court of Appeal describe persons in the third category as "Newcomers", being persons unknown who are not identifiable when proceedings are issued but who will come into existence when they commit a prohibited act. The court held that interim relief may be obtained against the first category and the third category (Newcomers) whereas final injunctions are only available against the first category (those who are identifiable), because they can only operate as between parties to the proceedings and because service is essential.

27 Paragraph 82 of the judgment of the court sets out procedural guidelines applicable to proceedings for interim relief against persons unknown in protestor cases. I will not read out all of the guidelines, but will highlight a few points that are relevant for today's purposes.

28 The judgment emphasises that if a person (a potential defendant) is known and has been identified, they must be joined as an individual defendant to the proceedings. The

Claimants can, therefore, not be criticised for seeking to join individual defendants whom they believe they have identified. That is what they are required to do.

- 29 The Court of Appeal acknowledged that it might be necessary to use some form of alternative service, but that alternative service must be in a form that can reasonably be expected to bring the proceedings to the attention of the proposed defendant.
- 30 The Court of Appeal also made it clear that a category of persons unknown must be defined by reference to the conduct which is alleged to be unlawful.
- 31 Further, interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort (a wrong) being committed to justify that sort of pre-emptive action.
- 32 The Court of Appeal also emphasised that the terms of the injunction must be sufficiently clear and precise, so as to enable persons potentially affected to know what they must not do. For example, unnecessary legal language and (where possible) references to intentions should be avoided.
- 33 Finally, the Court of Appeal emphasised the importance for the injunction to have clear geographical and temporal limits.

#### **Objections raised by Defendants 7 to 12**

- 34 On behalf of Defendants 7 to 12, Ms Harrison had objected to the scope of the originally granted and currently in force injunction, which is said to have inappropriately interfered with the exercise of rights to free speech, assembly and protest. The version agreed in May 2020 removed one category of defendant, but so far as Defendants 7 to 12 are

concerned they say it did not properly reflect case law developments. As indicated, the Claimants do not accept that.

35 In the light of the witness statement on 3 February, which has proposed a significant narrowing of the existing injunction, Defendants 7 to 12 do not now dispute the scope of the injunction sought, which they say essentially reflects the position they have been contending for. They no longer now seek to strike out the claim. They do seek an earlier date for the hearing in respect of the final order and a clear temporal limit on the interim injunction. I have dealt with both of those points during the hearing. The final hearing will now be listed for two days between June and October, and I am proposing a final expiry date for the interim injunction of 31 October, or trial or further order if earlier.

36 One question that arose was why these proceedings have taken so long to come back to a hearing in this court. The appeal was discontinued in the Court of Appeal getting on for two years ago, in May 2019. I understand that the case took some time to come back to the High Court, and this may be the reason for the fact that two of the applications before me were first made in February and March 2020. But there was then a significant further delay between those applications being made and this hearing being listed. It appears that that may have been due to an administrative issue between the parties. Although Defendants 7 to 12 sought to criticise the delay in bringing the matter back for a hearing, I am not in a position to apportion blame.

37 The Defendants 7 to 12 made their strike out application in March 2020. The Claimants had applied to add additional defendants in February 2020. The Chief Master ordered a hearing of those applications and this is the hearing of those applications. In the circumstances, I do not think the fact that the Claimants have adopted a revised approach in which they have

radically scaled back the number of defendants sought to be covered and the extent of the relief sought only shortly before the hearing prevents me from granting the relief sought. The changes are late, but they assist the court. I also note that as between Defendants 7 to 12 and the Claimants, they have agreed that no costs would be sought except for unreasonable conduct, and Defendants 7 to 12 are not seeking costs on the basis that conduct was unreasonable.

### **Joinder of parties**

- 38 I now turn to deal with the application to join parties. In relation to Defendants 17 to 20, the Claimants rely on events pre-dating the initial grant of the injunction in September 2018. Defendant 17 (Mr Monaghan) is said to be a longstanding protestor against oil and gas companies. The Claimants say that he participated in a trespass and occupation of the Horse Hill site in November 2017, which was the event that prompted the Claimants to issue the proceedings. They also say that on leaving the site he threatened to return and also climbed on a lorry trying to leave the site.
- 39 Defendant 18 (Mr Whittick) is said to have followed a vehicle leaving the Broadford Bridge site carrying a rig, climbed onto it when it stopped at a service station and unfurled a banner. He remained overnight, was arrested and was subsequently convicted of hindering the rig owner from carrying out its lawful business. I am told that the Broadford Bridge site is in close proximity to the Horse Hill site.
- 40 Defendant 19 (Mr Eden) is also said to be a long-term protestor against the fossil fuel industry, who the Claimants say participated in a trespass and occupation of a related site at Leith Hill. They also say he was present at Horse Hill on 20 August 2018 and participated in an incident in which the gates were obstructed and at one point an attempt was made to force them.

- 41 Defendant 20 (Mr Smith) is also said to have been present at and participated in the same incident at Horse Hill on 20 August 2018.
- 42 I have already referred to the position of Defendants 22 to 29, in respect of whom the Claimants rely on the events they say occurred at Horse Hill that I have already summarised. The Claimants also say that these Defendants are already defendants and subject to the existing injunction, because their actions meant they were caught as persons unknown, such that adding them as named defendants would simply formalise the position and reflect judicial guidance.
- 43 As far as service is concerned, Defendants 17 to 23 were covered by the application dated 7 February, so that the Chief Master's order for alternative service applies to them. As regards Defendants 24 to 29 (and in fact also Defendants 22 and 23), I understand that addresses are available and that they have been served at those addresses or through solicitors.
- 44 I accept that it is appropriate to join the proposed additional defendants, namely Defendants 17 to 29 with the exception of Defendant 21. The application to join defendants is independent of any controversy around the interim injunction and allows the Claimants to pursue their claim for a final injunction against the proposed defendants. Joinder of these additional defendants should not cause any prejudice to other defendants and does not adversely impact any trial date.
- 45 Given the procedural progress of the proceedings, the applications to join defendants are not late. The first CMC was in November 2019. The Claimants raised the issue of naming additional defendants at that hearing because it had by then been flagged in the first instance

decision in *Canada Goose*. The application made on 7 February was within the time permitted by the Chief Master in his order dated 15 November 2019. Defendants 24 to 29 have been involved in more recent events and although the application to join them was only made in January 2021, they have already, as I indicated, been brought within the scope of the proceedings - at least on the Claimants' case - as persons unknown. I do think it is convenient and proportionate for the case against all these defendants to be heard together.

46 It certainly cannot be said, particularly on the narrowed basis in which it is now pursued, that the claim is bound to fail, or that the Claimants have no real prospect of success. Relief is sought in respect of trespass to land. That needs no further explanation. It is clearly actionable. The other relief sought relates to interference with a landowner's right to pass from the public highway onto his land and vice versa. That can, in principle, found an action for private nuisance, failing which potentially for public nuisance in the form of obstructing the highway and causing special damage to the Claimants (*Clerk and Lindsell on Torts*, 23<sup>rd</sup> ed. at 19-180 and 19-181). Climbing on vehicles as they are leaving or entering the site might constitute a form of obstruction or an interference with chattels. If those chattels are owned by any of the Claimants, the cause of action would be clear. If they are owned by agents or contractors then there is a potential claim at least for causing loss by unlawful means, in the form of the tort of interference with the actions of a third party with the intention of causing loss to the Claimants (*OBG Limited & Others v Allan & Others* [2008] 1 AC 1 at [45]-[64]).

47 In summary, I am content that those defendants should be joined to the proceedings.



### **The interim injunction**

- 48 I now turn to the scope of the interim injunction. I have already identified the reduced scope of the relief now sought, that is entering or remaining on the site, climbing onto vehicles coming to or leaving the site, and obstructing the entrance to the site. In order to determine whether to extend the injunction to the additional defendants and agree to its revised terms, I need to be satisfied of a number of things. I must be satisfied, as with any injunction of this nature, that there is a serious question to be tried. I am satisfied of that for the reasons already given in relation to joinder. That is a fairly low threshold. I have to satisfy myself that damages would not be an adequate remedy. I do not think that that can seriously be disputed here. What the Claimants are seeking is in the nature of preventing obstruction to people coming on and off the site and preventing trespass. It is clear from the evidence that actions of protestors that go that far can have a material economic impact on the Claimants.
- 49 Because any injunction being granted is in essence a *quia timet* injunction, the focus is the potential for future harm rather than existing harm. I need to satisfy myself that there is a sufficiently real and imminent risk of a wrong being committed to justify an injunction. I need to satisfy myself that the grant of relief is not simply premature, but rather that there is really something that justifies granting relief.
- 50 I also need to be satisfied that the “balance of convenience” favours the grant of an injunction. Further, because human rights are engaged and in particular the rights to freedom of expression and freedom of assembly conferred by Art.10 and 11 of the ECHR, I need to consider whether it is appropriate to grant relief that might have an impact on those freedoms. The rights granted by those articles permit such restrictions as are “prescribed by law and are necessary in a democratic society” for certain purposes which include the protection of the rights of others.

51 The Claimants say that there is a sufficiently real and imminent threat of further wrongdoing. They say there is a campaign of protest against the activities at Horse Hill, that all of the additional defendants have behaved unlawfully in the past in the manner that the Claimants seek to restrain as part of an organised campaign, and that there is no reason to believe that the campaign has ceased or that the defendants' belief in the correctness of the campaign has weakened. They rely on a reference by one campaigner to the CPS dropping cases as being a vindication of their actions. They rely on what they say are breaches of the existing injunction by Defendants 22 to 29 and have pointed to increased costs incurred due to the suspension of operations caused by protests.

52 The Claimants say that the injunction sought would permit them to go about their lawful business. Insofar as it would interfere with the defendants' freedom of expression or freedom of assembly, they say that the interference is of a kind permitted by Art.10 and 11, in essence as being necessary to protect the Claimants' own rights and freedoms. They rely on *DPP v Ziegler* [2020] QB 253 at [64] where the questions for the court are posed as follows:

“(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 interest of the community, including the rights of others?”

- 53 I note that the Claimants have offered and include a cross-undertaking in damages, and I have seen evidence about the balance sheet of the First Claimant.
- 54 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 that 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.
- 55 I emphasise that it is a question of fair balance and proportionality. What the revised order will not prevent is standing outside the site or even slow walking in front of or around the site, including standing in an area marked on the plans attached to the proposed order which is just outside the entrance gates, provided that protestors do not physically prevent or obstruct vehicles or people coming in or out. That seems to me an appropriate and fair balance and to deal in an appropriate manner with the concerns previously raised on behalf of Defendants 7 to 12.
- 56 I also take account of the fact that the injunction that I am being asked to agree to, as it affects the additional defendants, is not being sought against any of Defendants 17 to 20. It is being sought against Defendants 22 to 29, each of whom have been involved in specific acts of protest that would, if the Claimants' case is made out, be a breach of the injunction in its narrowed form within a fairly recent period from December 2019 onwards, being December 2019 for Defendants 22 and 23 and events during 1 June 2020 for Defendants 24 to 27. As already indicated, Defendants 28 and 29 have agreed a Consent Order.

57 Given that they have, on the Claimants' case, already taken action of a kind that would be caught by the injunction and the evidence I have indicates that there is a form of campaign of protest, I think the balance is in favour of granting an injunction which extends to Defendants 22 to 27. To the extent necessary I find that there is a sufficiently real and imminent risk of further wrongful action being taken if I do not grant protection. However, I also take account of the fact that those Defendants have, it appears, been involved in relatively recent protests so it is arguable that this would not be a pure *quia timet* injunction. The Claimants rely on past actions. In those circumstances, applying the fair balance approach that I must apply, I think an injunction in the revised form now sought is appropriate.

### **Summary**

58 In summary, therefore, I am joining Defendants 17 to 29, with the exception of Defendant 21. I am revising the injunction in the form that has been described. That injunction will extend to Defendants 22 to 27. The eight-day trial date will be vacated and replaced with a two-day trial before the end of October, and the interim injunction will expire at the end of October if not previously dealt with.

59 An order will also be made providing for this matter to come back to a Master for a CMC after an appropriate period to allow any of the defendants who are being joined to file an acknowledge of service and a defence should they wish to do so. If they do not choose to do so then the order will contemplate the possibility of the Master making a final order at the CMC. Reflecting the Court of Appeal decision in *Canada Goose*, that final order will need to exclude the so-called persons unknown, such that any final order would be against named defendants only.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

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