



Neutral Citation Number: [2022] EWHC 911 (QB)

Case No: QB-2022-000904

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 April 2022

Before :

MR JUSTICE BENNATHAN

Between :

- (1) VALERO ENERGY LIMITED
(2) VALERO LOGISTICS UK LIMITED
(3) VALERO PEMBROKESHIRE OIL
TERMINAL LIMITED

Claimants

- and -

- (1) PERSONS UNKNOWN ENTERING OR
THREATENING TO ENTER AND REMAIN
WITHOUT THE CONSENT OF THE
CLAIMANT(S) ON THE LAND KNOWN
INFORMALLY AS PEMBROKE REFINERY,
MANCHESTER TERMINAL, KINGSBURY
TERMINAL, PLYMOUTH TERMINAL,
CARDIFF TERMINAL, PEMBROKESHIRE
TERMINAL AND AVONMOUTH
TERMINAL AND MORE PARTICULARLY
DESCRIBED IN THE ORDER OF 11 APRIL
2022 AS THE CLAIMANTS' LAND

Defendants

- (2) PERSONS UNKNOWN CAUSING OR
THREATENING TO CAUSE BLOCKADES,
OBSTRUCTIONS AND/OR PREVENT THE
FREE FLOW OF TRAFFIC AND
INTERFERE WITH THE PASSAGE BY THE
CLAIMANTS AND THEIR AGENTS,
SERVANTS, EMPLOYEES, LICENSEES,
INVITEES WITH OR WITHOUT VEHICLES
AND EQUIPMENT TO, FROM, OVER AND
ACROSS THE ROADS IN THE VICINITY OF
THE LAND KNOWN INFORMALLY AS

**PEMBROKE REFINERY, MANCHESTER
TERMINAL, KINGSBURY TERMINAL,
PLYMOUTH TERMINAL, CARDIFF
TERMINAL, PEMBROKESHIRE
TERMINAL AND AVONMOUTH
TERMINAL IN CONNECTION WITH
ENVIRONMENTAL PROTESTS BY THE
JUST STOP OIL AND/OR EXTINCTION
REBELLION AND/OR INSULATE BRITAIN
AND/OR YOUTH SWARM MOVEMENTS**

Toby Watkin QC (instructed by Shoosmiths LLP) for the Claimants

Hearing dates: 11 April 2022

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30a.m. on 13 April 2022.

Mr Justice Bennathan :

1. This case was an application for a further interim injunction. The Claimants are a linked group of companies that import and process oil. The Defendants are those who it is anticipated may protest against the oil industry.
2. At the end of the hearing I agreed to make an order for an injunction but declined to do so in all the terms sought. This judgment sets out my reasons for that decision.
3. In describing the application, the issues I have had to consider, and my conclusions I shall do my best to follow the lead of Sir Geoffrey Vos, M.R., and use non-technical English rather than the Latin tags which have “*bedevilled*” this area of law and practice [*London Borough of Barking and Dagenham and others v Persons Unknown and others* [“*Barking and Dagenham*”] [2022] EWCA Civ 13, at 8].
4. The Claimants were represented by Toby Watkin QC and I am grateful to him and the rest of the Claimants’ legal team for all the hard work that has gone into preparing this application. The Defendants were neither represented nor present. Section 12 of the Human Rights Act 1998 limits a Court’s ability to grant any relief, such as an injunction, in a case where freedom of expression is involved and the defendant is neither present nor represented. That limitation does not apply, however, where the applicant has taken all practical steps to notify the defendant: in this case, there have been emails sent to the various groups that are organising the protests, and copies of the interim injunction have been left at the edge of all the Claimants’ sites [thus alerting protestors to the existence of these proceedings]. On that basis I was satisfied the Claimants have taken all practical steps and thus I could make the order sought if the other criteria were met.
5. I was assisted by a letter sent by Hodge, Jones and Allen Solicitors, on behalf of an individual associated with “*Extinction Rebellion*” who had become aware of this application. Their client had no intention of joining the anticipated protests that are the subject of the application, but Hodge, Jones and Allen made some submissions as to the detail of parts of the order sought. I do not need to set out any more detail of the letter, as all of their concerns were accommodated by the terms of the order I eventually made and, in one instance, by Mr Watkin agreeing to vary a part of the order. I am grateful for their input but should make it clear that their comments do not amount to a defendant being represented in these proceedings.

Facts

6. The identity of the Claimants and the various sites that are the subject of this application were set out in the witness statement of Adrian Rafferty, a Solicitor who is employed by the Valero Energy Corporation as a Director and the Head of Legal Services [UK and Ireland]. I anticipate his descriptions are uncontroversial, so I simply reproduce them for the purposes of this judgment, omitting references to the various attachments, and thereafter I will refer to the Claimants collectively as “*Valero*”:

VALERO GROUP

Globally, the Group – of which Valero Energy Corporation is the ultimate parent company - is the largest independent petroleum refiner and the second largest

renewable fuels producer. In the UK alone, the Group owns and operates Pembroke Refinery in south-west Wales, (one of seven major refineries within the UK), as well as a distribution network consisting of six fuel terminals throughout the UK. Alongside indirectly supplying petrol and diesel to UK customers through filling stations that we supply directly and various large supermarkets, the Group also has a significant aviation fuels business and sells a large variety of refined petroleum products to the wholesale market within the UK.

RELEVANT SITES

The Refinery

VEL is the:

freehold proprietor of land being Pembroke Refinery, Angle, Pembroke SA71 5SJ and registered at HM Land Registry under title number CYM613413; and leasehold proprietor of land being various tanker berthing jetties and part of the bed of Milford Haven and registered at HM Land Registry under title number CYM614801. (together the “Refinery”).

In brief, the Refinery comprises ship jetties, tankage, extensive crude oil refining facilities, utilities systems, road tanker loading facilities, maintenance facilities and laboratories.

Manchester Terminal

VLUK Limited is the freehold proprietor of:

land forming part of Trafford Wharf Road, Davyhulme registered at HM Land Registry under title number GM12948.

land and buildings on the north side of Trafford Wharf Road, Trafford Park registered at HM Land Registry under title number GM681405.

land and buildings on the north east and south west sides of side of Trafford Wharf Road, Trafford registered at HM Land Registry under title number GM681406.

land on the north east side of Trafford Wharf Road, Trafford Park registered at HM Land Registry under title number GM783767.

land and buildings on the south west side of Trafford Wharf Road, Daveyhulme registered at HM Land Registry under title number LA296722.

land and buildings on the north side of Trafford Wharf Road, Trafford Park and part of the site of Trafford Wharf Road, Trafford Park registered at HM Land Registry under title number LA331236; and

land and buildings on the west side of Trafford Wharf Road, Daveyhulme registered at HM Land Registry under title number LA182975.

(together the “Manchester Terminal”).

In brief, the Manchester Terminal comprises a number of storage tanks, road loading bays and associated pumps and pipework, which all receive high and low flash hydrocarbon material by pipeline, and road and discharge the same by way of road transport.

Kingsbury Terminal

VLUK is the freehold proprietor of Plot B, Trinity Road, Kingsbury, Tamworth registered at the Land Registry under title number WK471878 (the “Kingsbury Terminal”).

Whilst there are some technical differences and scale differences between the Kingsbury Terminal and the Manchester Terminal (which I do not consider to be relevant for the purposes of this statement), the Kingsbury Terminal is practically identical to it in terms of its function.

Plymouth Terminal

VLUK is the leasehold proprietor of land on the south west and north east sides of Oakfield Terrace Road and land on the south east side of Macadam Road and on the south side of Oakfield Terrace Road registered at the Land Registry under title number DN313194. (the “Plymouth Terminal”).

Once again, the Plymouth Terminal is practically identical, in terms of its basic function, to both the Kingsbury and Manchester Terminals. The only significant difference is that the Plymouth Terminal also receives product by ship as well as road, but does not receive any product by way of pipeline.

Cardiff Terminal

VLUK is the leasehold proprietor of Valero Refinery, Roath Dock, Rover Way, Cardiff CF10 4US registered at HM Land Registry under title number CYM801292 (the “Cardiff Terminal”).

As to the Cardiff Terminal, in practical terms and for the purposes of this statement, this is effectively identical to the Plymouth Terminal (namely in that it also has a marine/shipping element to it, as well as road).

Avonmouth Terminal

VLUK is the leasehold proprietor of land being an Oil Terminal, Avonmouth Dock, Bristol registered at HM Land Registry under title number BL116644 (the “Avonmouth Terminal”).

For the purposes of this statement, the Avonmouth Terminal is practically identical in its function to both the Cardiff and Plymouth Terminals.

Pembrokeshire Terminal

VPOT is the leasehold proprietor of the land known informally as “Valero Pembrokeshire Oil Terminal”, Waterston, Milford Haven registered at HM Land Registry under title number CYM287387.

(the “Pembrokeshire Terminal”).

For the purposes of this statement, the Pembrokeshire Terminal is effectively a fuel storage tank farm on the other side of Milford Haven to the Refinery. It receives product by ship and discharges it by road and pipeline.

7. The injunction sought before me would be a further interim injunction, following an order granted by Mr Justice Butcher on 21 March 2022.
8. What is it that the Claimants fear? The material available to me falls into 3 categories and is set out chiefly in the witness statements of David Blackhouse, the European Senior Security Manager for the Valero Group. I will list them and consider them in turn:

- (1) A briefing from the National Police Coordination Centre.
- (2) Open source reports of the plans of protestors.
- (3) The events in the last few days.

9. Mr Blackhouse lists a number of law enforcement and intelligence bodies with whom he has regular contact, as most of Valero's sites are considered to be Critical National Infrastructure. The specific concerns that led to these applications, however, were raised by information from the National Police Coordination Centre [*"the briefing"*]. The briefing was before Butcher J when he granted the order of 21 March. There was a problem. Valero had not realised that the briefing was confidential and its disclosure without permission could lead to sanctions up to and including under the criminal law. Permission was not granted. It was agreed at the hearing that I should not attach any weight to the conclusions that Mr Blackhouse had drawn from material I had not seen. It follows that the information that I have to go upon is different in this and indeed other respects from that before Butcher J.
10. The open source material is set out in Mr Blackhouse's witness statement dated 18 March 2022. The suggestion he makes is that the groups "*Just Stop Oil*" [*"JSO"*], *Extinction Rebellion* and *Insulate Britain* have published plans to target the oil industry and in particular the owners of refineries, depots, terminals and pipelines, using non-violent direct action. Mr Blackhouse has found, and exhibits, statements from the groups that proclaim their intention in late March or early April to disrupt the oil industry. There is mention of a sub-group, referred to as "*Youth Swarm*" or "*Youth Climate Swarm Group*". There are calls for other groups and individuals to join any protests.
11. The events in recent days are set out in a further witness statement by Mr Blackhouse, dated 5 April 2022. He detailed protests at one of the Claimant's 7 sites, the Kingsbury terminal, on 1 April:
 - (1) By about 8am there were protestors walking around the site.
 - (2) By about 4pm 3 tankers had been stopped and protestors were sitting on three of them [it is not clear which company these tankers were seeking to reach, as the facility adjoins 2 other companies' terminals] and other protestors were sat blocking the terminal entrance. In total there were about 25 protestors engaged in those activities.
 - (3) By about 8pm the police had cleared the area and by 9pm tankers were on the move once more.
12. On the evening of 2 April there were about 17 protestors who had blocked one of the access roads and about 100 had gathered at a junction of the nearby M42. In the event, the police were on the scene and the terminal remained open.
13. On 3 April there were further protests starting at about 4am with about 6 protestors blocking the entrance and a larger group blocking both access roads. The police cleared the protestors and tanker movements started by 6am. Later that day protestors occupied part of the road at about 1pm, but tankers were still able to get through.

14. Over the course of these protests, the police made 50 arrests, 22 on 1 April and 28 on 3 April. There was no report of any further protests on 4 April, the day the witness statement was composed.
15. A press report on the morning of the hearing reported that “*Warwickshire police said 29 arrests had been made over the weekend at Kingsbury oil terminal for offences including criminal damage, conspiracy to cause criminal damage and conspiracy to commit public nuisance*” [Times, 11 April 2022]. While I need to be extremely cautious about acting on reports in the press that are not within sworn statements, my view is that this report suggests the protests are continuing intermittently at the Kingsbury site at about the same level as described by Mr Blackhouse. All or most these activities, insofar as I have any detail, seem to be breaches of the order made by Mr Justice Butcher.
16. The application before me included a number of orders that would tidy up or amend the order made by Mr Justice Butcher. They include varying the method of service to avoid the need to post the whole injunction [which is by now many dozens of pages], adding the “*Youth Swarm*” group to the list of groups to be contacted by email or websites, and removing those threatening action from the description of the Defendant groups to confine any injunction more clearly to those who might breach the actual terms: these all seem to me to be pragmatic and sensible modifications that would not be controversial and as such I ordered that they could be carried out.
17. The various detailed types of conduct that the Claimants seek to have prohibited by an injunction fall into 3 broad groups: trespassing, semi-permanent blocking of access roads, otherwise obstructing the highway. In my view different considerations apply to each. I do not think anything turns on which of the linked companies that make up the Claimants has responsibility for any particular site, and so I refer to “*Valero*” or the Claimants generally. Save for the possible significance that one site has been the subject of protests and 6 have not, I do not think the individual features of the various Valero sites are determinative of whether the various types of protest should be banned by the Court’s order. There is a further order sought of significance, that the various police forces responsible for the regions within which the sites are located, should make disclosure to the Claimants.

Law

18. The power for the Court to grant injunctions is set out in very broad terms in section 37 of the Senior Courts Act 1981. One criminal offence that characterises the sort of conduct that the Claimants fear is section 68 of the Criminal Justice and Public Order Act 1994, the offence of aggravated trespass, a trespass done to obstruct or disrupt a lawful activity. Another offence relevant to protests on roads is wilful obstruction of a highway, contrary to section 137 of the Highways Act 1980, which carries a power of arrest.
19. The well established test for the grant of an interim injunction was described in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. The first 2 aspects, whether there is a serious question to be tried and whether damages would be an adequate remedy were no injunction granted, are easily met in this case: the actions planned and publicised by the groups listed above clearly amount to a strong basis for an

action for trespass and private and public nuisance. Given the sort of sums involved in the oil industry and the impracticality of obtaining damages on that scale from a diverse group of protestors, some of whom may have no assets, damages would obviously not be an adequate remedy. The balance of convenience, however, is not so simply resolved in a case involving a largely anticipatory injunction, unidentified defendants, and the human rights of both sides. There have been a number of recent decisions of the Courts that engage with these matters that I will attempt to summarise insofar as they are relevant to the issues I had to decide in this case.

20. The injunction sought is an anticipatory injunction in the sense that any order against person unknown always is, and it is further placed within that category because 6 out of 7 of the Valero sites have not been the target of any action. In *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch) Mr Justice Marcus Smith summarised the effect of 2 decisions of the Court of Appeal on this topic, and I adopt his summary with gratitude. The questions I have to address are:
 - (1) Is there a strong possibility that the Defendants will imminently act to infringe the Claimants' rights?
 - (2) If so, would the harm be so “grave and irreparable” that damages would be an inadequate remedy. I note that the use of those two words raises the bar higher than the similar test found within *American Cyanamid*.
21. Injunctions against unidentified defendants were considered by the Court of Appeal in the cases of *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 [“*Ineos*”] and *Canada Goose Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 [“*Canada Goose*”]. As both cases are recent decisions concerning unknown defendants in protest cases, they are of particular significance to the case I had to decide.
22. *Ineos* concerned protests against “fracking”. There was argument before the Court that addressed the protestors’ Article 10 and 11 rights under the Convention, the rights to freedom of expression and association. In the course of the judgment it was said [30] that a “court should be inherently cautious about granting injunctions against unknown persons since the reach of such an injunction is necessarily difficult to assess in advance.” In his conclusions Lord Justice Longmore “tentatively” framed the requirements of an injunction so as to include:
 - (1) The terms must not be so wide that they prohibit lawful conduct
 - (2) The terms must be sufficiently clear and precise to enable persons potentially effected to know what they must not do.
23. *Canada Goose* was concerned with protests against clothing containing animal products. The Court of Appeal’s judgment revisited *Ineos* and another decision in a fracking protest appeal [*Caudrilla Bowland v Persons Unknown* [2020] 4 WLR 29] and described [at 82] a modified version of Longmore LJ’s requirements [once more, I reproduce only those that are pertinent to this case]:
 - (1) The prohibited acts must correspond to the threatened tort. They may include lawful conduct if, and only to the extent that, there is no other proportionate means of protecting the claimant’s rights.
 - (2) The terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do. The prohibited acts must not, therefore, be described in terms of a legal cause of action, such as trespass or harassment or nuisance. They may be defined by reference to the

defendant's intention if that is strictly necessary to correspond to the threatened tort and done in non-technical language which a defendant is capable of understanding and the intention is capable of proof without undue complexity. It is better practice, however, to formulate the injunction without reference to intention if the prohibited tortious act can be described in ordinary language without doing so.

24. An issue that took up much of the hearing before me and was the subject of focused and forceful submissions by Mr Watkin QC, was how I should approach limitations on the Article 10 and 11 rights of the defendants. Before leaving *Canada Goose* there are aspects of the case that seem to me to be very pertinent to this issue. Articles 10 and 11 featured centrally in the Court of Appeal's decision. The Court recited the findings of the trial Judge, Mr Justice Nicklin, that a term of the injunction that sought to limit protestors to certain numbers in certain locations was not proper, and did so without criticism. In the judgment the term "*unlawful*" was used to describe both breaches of the criminal law and tortious conduct, without the Court drawing any sharp distinction between the two. At the end of the judgment the Court [at 93] made an observation that may be very significant to the decisions I had to take:

As Nicklin J correctly identified, Canada Goose's problem is that it seeks to invoke the civil jurisdiction of the courts as a means of permanently controlling ongoing public demonstrations by a continually fluctuating body of protesters. It wishes to use remedies in private litigation in effect to prevent what it sees as public disorder. Private law remedies are not well suited to such a task. As the present case shows, what are appropriate permanent controls on such demonstrations involve complex considerations of private rights, civil liberties, public expectations and local authority policies. Those affected are not confined to Canada Goose, its customers and suppliers and protesters. They include, most graphically in the case of an exclusion zone, the impact on neighbouring properties and businesses, local residents, workers and shoppers. It is notable that the powers conferred by Parliament on local authorities, for example to make a public spaces protection order under the Anti-social Behaviour, Crime and Policing Act 2014, require the local authority to take into account various matters, including rights of freedom of assembly and expression, and to carry out extensive consultation: see, for example, *Dulgheriu v Ealing London Borough Council* [2019] EWCA Civ 1490, [2020] 1 WLR 609. The civil justice process is a far blunter instrument intended to resolve disputes between parties to litigation, who have had a fair opportunity to participate in it.

25. Then came the decision of the Supreme Court in *Director of Public Prosecutions v Ziegler* [2022] AC 408 [*Ziegler*]. Protestors had blocked a road leading to a venue where an arms fair was being held, by sitting in the road and by attaching themselves to heavy objects [*lock boxes*]. They had been arrested and prosecuted for obstructing the highway under section 137 of the Highways Act 1980, which offence has a "*lawful excuse*" defence. The District Judge hearing the trial dismissed the charges on the basis that, having weighed up considerations that pulled either way including the protestors' Article 10 and 11 rights, he concluded the prosecution had failed to negate the statutory defence advanced by the defendants. The Divisional Court allowed an appeal against the decision of the District Judge. The Supreme Court then allowed the further appeal and restored the dismissals. *Ziegler* was an

important, perhaps a landmark, decision about the right to protest, but its effect should not be misunderstood: the Court did not declare that blocking roads was henceforth a legitimate and lawful form of political action, but that on occasions it might not be a crime under that section of that act. It is notable that the Supreme Court discussed and approved a list of considerations of the detailed facts that a judge should weigh in such cases, before reaching a decision.

26. The limits to *Ziegler* were made clear in *DPP v Cuciurean* [2022] EWHC 736 (Admin) in which Lord Burnett CJ held that *Ziegler* did not impose an extra test in a case of aggravated trespass under section 68 of the Criminal Justice and Public Order Act 1994, as Article 10 and 11 rights do not generally include the right to trespass, and parliament had set the balance between those rights, and the lawful occupier's rights under Article 1 of Protocol 1 ["A1P1"], by the terms of that offence.
27. The right to peaceful enjoyment of one's property has been honoured by the Courts for centuries, albeit not described as a human right nor still less as A1P1. Article 10 and 11 rights have been described in numerous cases, from which I select only two examples:
 - (1) In *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 Lord Justice Laws said [at 43]: "*Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.*"
 - (2) In *Kudrevicius v Lithuania* (2015) 62 EHRR 34 [91] the European Court of Human Rights stated that "*the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expressionis one of the foundations of such a society. Thus, it should not be interpreted restrictively*"
28. In assessing the balance between competing rights in protest cases, it is not for the Court to choose between different political causes. In *City of London Corporation v Samede* [2012] PTSR 1624 Lord Neuberger, M.R., stated as follows [within 39 to 41]:

As the judge recognised, the answer to the question which he identified at the start of his judgment [the limits to the right of lawful assembly and protest on the highway] is inevitably fact sensitive, and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public..... The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command.....the court cannot, indeed, must not, attempt to adjudicate on the merits of the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention . . . the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous.....Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention

is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom.

29. It is clear that once breach proceedings are under way, it is no defence for the alleged contemnor to argue that the injunction should not have been granted in the first place, or that its terms are too broad. The balance between property rights and the right of protestors is one that has to be struck when the injunction is granted [see *National Highways Ltd v Heyatawin and Others* [2021] EWHC 3078 (QB), at 44 and 45].

Discussion

30. Only one side was represented before me. Nonetheless, as I am being asked to impose an injunction that could expose those who breach it to imprisonment, I need to justify why I made any order. The other side of the coin is that if I decline to make any significant part of the order sought, as I did, I need to set out my reasoning for doing so, not least as the Claimants have a right of appeal.
31. The order I made forbids various acts of trespass, including the blocking of gates on Valero's premises, and forbids acts of obstructing certain specified roadways, including public highways, in various semi-permanent ways. It does so for all seven sites. I made that order having been satisfied that:
- (1) Were the underlying claims ever to reach trial, Valero has a strong basis for an action for trespass and private and public nuisance on the basis of the protests that have already occurred on one site and are threatened for others.
 - (2) Given the sort of sums involved in the oil industry and the impracticality of obtaining damages on that scale from a diverse group of protestors, some of whom may have no assets, damages would obviously not be an adequate remedy.
 - (3) There is a strong possibility that the Defendants will imminently act to infringe the Claimants' rights, given they have already done so on one site and have promised [if that is the right word] that similar actions will continue on sites such as Valero's other premises.
 - (4) The harm caused by the activities I have sought to prevent by the terms of the injunction would amount to "*grave and irreparable*" harm in that trespassing on the sites could lead to highly dangerous outcomes given the highly flammable or even explosive nature of the materials being handled. Semi-permanent obstruction of the roads could also lead to a different type of very serious damage, in that many of the sites are part of the Critical National Infrastructure and numerous businesses, emergency services, hospitals and other key parts of society depend on oil based fuels.
32. Further objections to any grant of an injunction might be that I have failed to accommodate Article 10 and 11 rights and that the previous injunction has been ineffectual given protests have occurred anyway on the one site. The latter point was addressed by Lord Bingham in *South Buckingham District Council v Porter* [2003] 2 AC 558 [at 32] where he made clear that, "*Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent*". I will address Articles 10 and 11 in my reasons for rejecting some parts of the order sought by Valero, but the parts of the injunction that forbid trespass are legally justified by the decision of the Lord Chief Justice in *DPP v Cuciurean*, as above.

33. Valero has rights under A1P1 and must be entitled, as are all companies and individuals, to seek the protection of the Courts. The fact that others have strongly-held views about fossil fuels and the environment cannot be a basis for my refusing protection to a law abiding business once the relevant legal criteria are met.
34. I turn to my reasons for refusing to make the order in the full terms sought by the Claimants. The most significant parts of the draft that I rejected were clauses 3.4 and 3.8, that stated:
- [3.4] Blocking, endangering, slowing down, preventing, or obstructing the free passage of traffic onto or along those parts of the Access Roads (including for the avoidance of doubt by climbing onto vehicular traffic) between the points marked on the plans at Annex I which provide access to the Claimants' Land;
- [3.8] Refusing to leave the aforesaid parts of the Access Roads when asked to do so by a police constable, when causing an obstruction pursuant to paragraphs 3.2 and 3.4 – 3.7;
35. My primary concern about banning any blocking of the road flows from *Ziegler*. The effect of that decision, it seems to me, is that Parliament and the Supreme Court have brought about a situation where the rights of protestors, and those against whom they protest, can be assessed and weighed carefully with knowledge of all the facts. The order sought by Valero would have had the effect of demolishing that delicate balance. There would be no “*lawful excuse*” defence to a breach of that order. Protestors whose identities, disposition and activities were completely unknown to the Court when the order was made would be liable to imprisonment. In my view the better course, when dealing with actions by protestors that *might* be found lawful on a *Ziegler* assessment, is for the Court to leave those matters to the police to enforce and the Magistrates Courts to adjudicate.
36. Doing the best I can to anticipate how a *Ziegler* assessment might be resolved when dealing with any obstruction of the access roads in this case I have drawn the line slightly differently from the District Judge’s decision in that case, as he acquitted those who had used lock-boxes whereas they would be caught by one of the terms on the order I have made: I think there is justification for this as the activities of a part of the Critical National Infrastructure would attract a higher level of consideration in the balancing exercise than would those of an arms fair.
37. There is support for my approach in deferring to the judgment of a criminal court on blocking roads in a number of the authorities I have already considered:
- (1) As Lord Justice Longmore stated in *Ineos*, there is a need for caution when granting injunctions against unknown people.
 - (2) I have to allow for the rights of protestors in setting the terms of any injunction, as was stated by the President of the Queen’s Bench Division in *National Highways Ltd v Heyatawin and Others*: An order that would expose a protestor to the prospect of lengthy and intimidating High Court contempt proceedings and the risk of imprisonment for *any* activity that obstructs an access road, no matter how briefly or how little effect it had on the activities of the Claimant, would fail to make that allowance. This is not a theoretical proposition, I note that the report of

- 3 April includes a stage when part of the access road was blocked but tankers could still pass by.
- (3) An anticipatory injunction requires the prospect of harm be so “*grave and irreparable*” that damages would be an inadequate remedy: It is not easy to unpick the consequences of the protests of early April at the Kingsbury terminal, so as to distinguish between the harm caused by some of the activities I have forbidden within the injunction and those I have not. That judgment is made more complicated by the fact that efficient police actions seem to have avoided any very serious consequences to date, and I have no reason to think the police will cease in their efforts. Insofar as I can make that judgment the harm that might be caused by the activity I have declined to ban does not reach that heightened level.
 - (4) At paragraph 93 of *Canada Goose* the Court of Appeal made an observation suggesting statutory powers were better equipped to deal with certain situations than were injunctions: although the Court did not go on to state any firm conclusion from that observation, it might suggest the type of solution I have arrived at in this case.
 - (5) The Courts have repeatedly stressed the need for the terms of an injunction to be clear [In *Ineos*, to take one example] but in my view the paragraph sought by Valero lacks clarity: Does a protestor standing at the very edge of the carriageway endanger themselves or a vehicle? Would a large group of noisy protestors proximate to the road cause a cautious tanker driver to slow down?
38. Once I raised my concern and preliminary view Mr Watkin, on behalf of Valero, argued forcefully and at length that my assessment was legally and factually flawed. I hope I do no violence to his arguments if I summarise them thus:
- (1) There is a distinction between how rights should be balanced as between the state and an individual, in criminal law, and between two parties with competing rights, as in an application for an injunction.
 - (2) In *Canada Goose* the Court of Appeal stated in terms that on occasions an injunction may need to ban what would [injunction aside] be lawful conduct.
 - (3) Jurisprudence on Articles 10 and 11 did not allow those protesting or assembling to demand to do so at a particular location, nor was obstructing traffic or seriously disrupting the activities of others at the core of those rights, as was made clear in *DPP v Cuciurean*.
39. To deal with the first of those submissions: While I accept at once “*lawful*” can have a different meaning in different areas of law, the way in which the appellate Courts have discussed these matters shows that considerations of lawfulness move freely between criminal and civil unlawfulness without suggesting any fundamental distinction [see, for example, *Canada Goose*, as above]. Above all, it is simply wrong to say that in *Ziegler* the Supreme Court did not consider the rights of those adversely affected by the protestors [see paragraph 72, for example].
40. In *Canada Goose* the Court stated that an injunction can ban what would otherwise be lawful, but the way that proposition was expressed was in qualified [and perhaps even reluctant] terms: *may* include lawful conduct if, and *only to the extent* that, there is *no other proportionate means* of protecting the claimant’s rights [emphasis added]. The Court was clearly not expressing a rule that a defendant’s otherwise lawful conduct was *irrelevant* to whether an injunction should be granted. The limit of that ruling in

Canada Goose, it seems to me with respect, is that the facts of a certain case may require such an order which I, of course, unhesitatingly accept. My conclusion is only that this case, at present, does not.

41. In *DPP v Cuciurean* Lord Burnett made the points Mr Watkin relies upon in the clearest terms. It is one thing, however, to establish that location or traffic-slowness may not be at the core of Article 10 and 11 rights but quite another to claim there is a hard edged rule that those rights can never proffer a basis to render lawful that which would otherwise be unlawful, namely presence at a certain location, the obstruction of traffic, or the disruption of another's business. The possibility of such rights permitting presence in a certain location is clear from the judgment of Lord Neuberger, M.R., in *City of London Corporation v Samede* [2012] PTSR 1624. If it were right that those rights under the Convention could never render stopping traffic lawful, the Supreme Court would not have reached the conclusion it did in *Ziegler*.
42. For all these reasons I refused the clause sought by the Claimants. Before passing on to deal with other matters I should make clear that the terms of my order and of this judgment do not seek to encourage individuals to block highways, nor to assure anyone that such action can be carried out with impunity. The police have the power to arrest those they consider to be committing an offence under section 137 of the Highways Act 1980 and the Courts have the power to convict them. In taking the approach I have, I am not purporting to lay down any sort of immutable rule: there will be cases where the Court is justified in making an order that bans any blocking of a road. This case could yet become one of them, if events develop to justify such an amendment to my order. To quote Sir Geoffrey Vos, M.R., once more in *Barking and Dagenham* [at 123], "*The court cannot and should not limit in advance the types of injunction that may in future cases be held appropriate to make under section 37 against the world*".
43. I can deal with my refusal to include the other clause more shortly. My concern about a term banning "*Refusing to leave...when asked ...by a police constable, when causing an obstruction*" was twofold. First, to have an order that only arises when there has already been a breach of the terms of the injunction is to encourage "*double counting*" as any protestor caught by the bans I have approved would almost certainly be asked and decline to leave. Second, the police already have a power to arrest, and can threaten to use it if people are in any semi-permanent obstruction. I do not think it is practical, useful or assists clarity to equip police officers with two powers, one criminal the other civil.
44. The Claimants also sought an order for all the relevant police forces to disclose material that would be evidence of breaches of the injunction. Both the National Police Coordination Centre and all the various police forces that cover the Valero sites were notified of this application. The National Police Coordination Centre and all but one of the police forces replied, stating they were neutral on the application and had no objection to the Court dealing with it at the hearing. I attach no significance to the one force that failed to reply as it seems most likely they are simply slow rather than in disagreement and, in any event, the order includes liberty for applications to vary its terms. It seems to me the disclosure sought is the most sensible and efficient way to identify any breaches of the injunction, and the terms of

the draft order are hedged around with suitable confidentiality clauses. On that basis I also made this part of the order I passed.