

filed on behalf of the Claimant
C Tobin
2nd Witness Statement
Exhibits CHT2 to CHT5

Claim No: QB-2022-001236

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY**

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

and

- (1) DAVID BALDWIN
- (2) THOMAS BARBER
- (3) MICHELLE CADET-ROSE
- (4) TIM HEWES
- (5) JOHN HOWLETT
- (6) JOHN JORDAN
- (7) CARMEN LEAN
- (8) ALISON LEE
- (9) AMY PRITCHARD
- (10) STEPHEN PRITCHARD
- (11) PAUL RAITHBY
- (12) HOLLY ROTHWELL
- (13) NO LONGER PURSUED
- (14) JOHN SMITH
- (15) BEN TAYLOR
- (16) JANE THEWLIS
- (17) ANTHONY WHITEHOUSE
- (18) ANDREW WORSLEY
- (19) PERSONS UNKNOWN WHO ARE ORGANISING, PARTICIPATING IN OR ENCOURAGING OTHERS TO PARTICIPATE IN PROTESTS AGAINST THE PRODUCTION AND/OR USE OF FOSSIL FUELS, IN THE LOCALITY OF THE SITE KNOWN AS KINGSBURY OIL TERMINAL, TAMWORTH B78 2HA

WITNESS STATEMENT OF CLIVE TOBIN

I, CLIVE TOBIN, SOLICITOR, OF NORTH WARWICKSHIRE BOROUGH COUNCIL, THE COUNCIL HOUSE, SOUTH STREET, ATHERSTONE CV9 1DE, WILL SAY AS FOLLOWS:

1. I am employed by North Warwickshire Borough Council ("the Council") as the Head of Legal Services. I have had conduct of this matter, together with colleagues employed by the Council, since proceedings were issued in April 2022. I am duly authorised on behalf of the Claimant to make this witness statement.
2. Save where the source of my knowledge is expressly stated, the facts set out in this witness statement are from within my own knowledge. Where they are outside my direct knowledge, they are true to the best of my knowledge, information and belief.
3. By this witness statement, I will address the following matters:
 1. The steps taken by the Claimant to obtain the judgment of the Court in relation to the Claimant's application for an interim injunction following the hearing on 5 May 2022.
 2. The Claimant's application for directions to trial.
 3. The Claimant's applications to add persons arrested at Kingsbury Oil Terminal since 14 April 2022 as named defendants to the proceedings.
 4. The Claimant's application for alternative service in relation to its application for directions for trial and to add/remove Defendants.
 5. The Claimant's response to the application made on 16 January 2023.

1. Steps taken to obtain Judgment

4. Following the hearing on 5 May I have contacted the Court on many occasions to request a copy of the judgment. My correspondence was initially addressed to Katherine Stent at the Royal Courts of Justice, whom I emailed on 26 July 2022.

5. I received an automated reply indicating that Ms Stent had left her role. I therefore emailed Mr John Lloyd, whose name and contact details had been given in the automated reply. I did not receive a response to this email.
6. I sent further e-mails to Mr Lloyd on 11 August, 17 August, 4 October and 9 November, to which I received an automated reply on 11 August indicating that he was on holiday with no access to e-mails however, I did not receive any other reply from him until 9 November which stated that I should contact Ms Katie McLean, the replacement clerk for Mr Justice Sweeting.
7. On 9 November I e-mailed both Mr Lloyd and Ms McLean and received a response from her stating that Mr Justice Sweeting had been without a Clerk over the summer and hoped to pass judgment down in the week of 21 November. I therefore further contacted Ms McLean by e-mail on the following dates: 18 November, 28 November, 9 December, 16 December 9 January 2023, and 23 January.
8. On 18 November, I received a response from Ms McLean stating His Lordship hoped that judgment would be ready for handing down the following week.
9. On 13 December, I received a response stating that His Lordship hoped to be handing down judgment that week. On Friday 16 December I received a further e-mail stating that His Lordship was finishing the Judgment that day and that it should be ready to circulate on Monday.
10. On 12 January 2023, I received a response stating that His Lordship had nearly finished the judgment and hoped that it would be ready for distribution the following Monday (16 January). A further e-mail was sent on 26 January stating that an application has been made to set aside the Order, stating that the Judgment would be a necessary consideration in relation to the determination of that application and asking when it would be ready to hand down. I have checked my e-mail account again today and am unable to find a response to my e-mail dated 26 January.
11. Whilst those I have contacted have generally quickly and helpfully responded to my e-mails the Judgment has not yet been provided. I now produce copies of the e-mails referred to above, marked as exhibit CHT 2.

2. Application for Directions for Trial of the Application

12. Since first applying for the interim injunction in April 2022 it has been the Council's intention to set this matter down for trial. At the hearing on 05 May 2022, Sweeting J indicated that judgment could be expected to follow the next week. Thereafter, as set out above, the Claimant has repeatedly been reassured that judgment will follow shortly. In the circumstances, the Claimant thought it sensible to await the outcome before applying for directions for trial, especially as to date no party has indicated a desire to contest the application (see below, in relation to Ms Branch).
13. However, as a significant amount of time has now passed, judgment has not yet been provided, and the Claimant has had to enforce the interim injunction against 70 individuals for 108 breaches, the Claimant has decided that it is necessary to progress its application and seek a final hearing. In giving directions for such a hearing, the Court may wish to take account of the recent Supreme Court hearing in *Barking & Dagenham LBC v Persons Unknown* SC-2022-0046, in which judgment is awaited and which may cast light on the principles relating to final relief against persons unknown.

3. Application to add/remove Defendants

14. Since an interim injunction was granted on a without notice basis on 14 April 2022, 139 people ("the proposed defendants") have been arrested in the locality of Kingsbury Oil Terminal due to their activities in furtherance of a protest against the production and / or use of fossil fuels. I exhibit a list of names and addresses (where known) for those people at Exhibit CHT 3.
15. A written application was made on 27 April 2022 to add 21 of these people as defendants. I attach, for convenience, a copy of this application as Exhibit CHT 4. In relation to the other 119 names, who have become known to the Council since that date, their conduct brings them within the class described by the 19th Defendant and as their names are now known to the Council, it is appropriate for them to be added as named parties to the injunction.
16. The 18th Defendant was identified by the Police to the Council as somebody who had been arrested at Kingsbury Oil Terminal prior to any injunction having been granted. He has since written to the Council and indicated that he does not wish to return to Kingsbury Oil Terminal and has no intention of breaking the injunction granted. In the circumstances, the Council no longer considers it necessary to pursue its application against the 18th Defendant as a named party.

4. Alternative Service

17. The Claimant has postal addresses for 14 of the named Defendants, 128 of the proposed defendants and email addresses for 2 of the proposed Defendants. However, the Claimant has no means of contacting the other 2 named defendants, or the other 9 proposed Defendants. Further, as the 19th Defendant is persons unknown, the Claimant has no means of contacting persons falling within that class.

18. The Claimant has attempted to serve this application on all the named Defendants and proposed Defendants by:
 - (i) Sending a copy to the named/proposed defendants for whom the Claimant has a postal address.
 - (ii) Emailing a copy to the proposed defendants for whom the Claimant has an email address.
 - (iii) Posting a copy on its website.
 - (iv) Publicising it using the Claimant's Facebook page and Twitter account.
 - (v) Using best endeavours to ensure that a copy is posted on the local police social media accounts.
 - (vi) Posting a link to the copy of this application posted on the Claimant's webpage to the Facebook, Twitter, LinkedIn, YouTube and Instagram accounts of Just Stop Oil.
 - (vii) Emailing a copy to the following email addresses associated with Just Stop Oil:
 - (a) Ring2021@protonmail.com
 - (b) juststopoil@protonmail.com
 - (c) youthclimateswarm@protonmail.com
 - (viii) Displaying a notice setting out the nature of this application at the public entrances of the Claimant's main offices indicating how a hard copy of the application can be obtained.
 - (ix) Issuing a media release concerning this application, providing:

- (a) a summary of this application;
- (b) the date, time and location of any future hearings, if known
- (c) the addresses the webpage on which this application is published.
- (e) The Claimants' contact details as set out in the N244 application form; and
- (f) Details of where and how copies of this application, the interim injunction, power of arrest and the Claim Form and supporting documentation relied on by the Claimant may be obtained.

This media release was made to local print publications including the Coventry Telegraph; local radio stations including BBC Coventry and Warwickshire and BBC West Midlands; and the following television stations; BBC West Midlands and Central Television.

19. I can confirm that the Claimant will take each of the steps mentioned in paragraph 18 above by 11.59 pm on 15 March 2023. I shall file a further witness statement confirming that this has been done at least 3 days before any hearing. In those circumstances, I respectfully request that the Court grant approval for service of this application by alternative means, and retrospectively confirm that the steps taken constitute good service by alternative means pursuant to CPR Rule 6.27 so that each of the named and proposed defendants, including the 19th Defendant, has been served with this application.
20. The Council asks the Court to deal with service in this way because otherwise it would be necessary to make, and have a hearing in relation to, an application for permission to serve this application by alternative means before the application for directions could be made. Given that we simply seek to obtain directions so that the claim can progress which is in the interests of all parties, and given also that none of the named Defendants has yet indicated any intention to take part in the proceedings, and in light of the fact that the steps we propose to take to serve are more extensive than those required by Sweeting J to serve the interim injunctions with power of arrest, I would ask the Court to accept that this is a proportionate way to proceed so as to balance the rights of any other party who wishes to be heard against the cost of a separate application for alternative service and the need to progress the claim appropriately.

5. The Application made on behalf of Ms Branch

Standing

21. The Claimant is of the view that Ms Branch does not have the standing to make an application to discharge the interim injunction and power of arrest in this case.
22. From the outset of her intervention in this case Ms Branch has made it clear to the Claimant that she has not participated in any protests in North Warwickshire, does not intend to participate in any protests in North Warwickshire, and does not consent to becoming a named defendant to these proceedings. Whilst it is accepted that counsel informed the court that Ms Branch was his client at the time of making submissions at the return date hearing on 05 May 2022, those submissions were formally made on behalf of Mr Handling against whom committal proceedings (and the Claimant's application to join him as a Defendant) were pending and who therefore plainly did have standing to make the argument for discharge of the interim injunction.
23. Given Mr Handling's participation, it was unnecessary for the Claimant formally to object to Ms Branch's involvement; the outcome of the hearing would not have been altered in any way. This does not apply, however, in the circumstances of the current application which is put forward solely on behalf of Ms Branch – who has never changed her position that she is not willing to become a party to these proceedings – and not on behalf of any named defendant or person falling within the 19th Defendant.
24. CPR 40.9 provides that a person who is not a party, but who is *directly affected* by a judgment or order may apply to have the judgment or order set aside or varied. Ms Branch has made it explicitly clear that she is not such a person. This is therefore not a case like *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 where there was an arguable possibility that Ms Branch may find herself inadvertently caught up in contempt proceedings, and where refusal to hear Ms Branch would have resulted in the Court not hearing any submissions in opposition. If Ms Branch has no intention of participating in any protests in North Warwickshire, then it is impossible for her to inadvertently get caught up in contempt proceedings. Further, there are already 18 named defendants to the proceedings, plus a further 140 people who have been arrested pursuant to the power of arrest and who are subject to applications to be joined as named defendants but are in any event also directly affected by the injunction, and able to make submissions in opposition to it if they so wish.

25. The Claimant does not, therefore, accept that Ms Branch is directly affected by the order or has any right to apply to set it aside if she is not willing to be a party. The Council is concerned that this may be an attempt to use a non-party to make an application that could be made by a party so as to seek to avoid costs consequences in the event that the Council succeeds. I exhibit two letters sent on behalf of Ms Branch to the Claimant as Exhibit CHT 5 confirming that she has no intention to participate in any protests in North Warwickshire.

Merits of the Application

26. The delay in receiving judgment in these proceedings, in circumstances where the Claimant is not at fault, should not deprive the Claimant of a remedy to which it is otherwise lawfully entitled. The significant number of arrests for breach of the interim injunction currently in force demonstrate that the relief is plainly still required for all the reasons for which it was originally sought, namely, prevention of a public nuisance and in support of the criminal law. The Judge concluded that it was appropriate to continue interim relief pending receipt of his Judgment (see the Order dated 6 May 2022). The Claimant considers that such relief continues to be required.
27. The Claimant requests that a case management hearing be listed at which to consider the future conduct of the proceedings, including the listing of a final hearing, by which time it is hoped that the Judgment of Sweeting J will be available.

STATEMENT OF TRUTH

I believe that the facts in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

A handwritten signature in black ink, appearing to be 'AWZ', written over a horizontal line.

Dated: 10 March 2023