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**IN THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**  
**IN THE LEEDS DISTRICT REGISTRY**

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West Bar  
Workhouse Lane  
50 W Bar Green  
Sheffield  
S3 8PH

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Date of hearing: 13<sup>th</sup> June 2025

**Before:**

**MRS JUSTICE STACEY**

**Between:**

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**SHEFFIELD ENVIRONMENTAL SERVICES** **Claimant**  
**LIMITED AND OTHERS**  
**- and -**  
**PERSONS UNKNOWN** **Defendants**

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**YAASER VANDERMAN and JAGODA KLIMOWICZ (instructed by **Simmons & Simmons LLP**) for the **Claimant****

**THE DEFENDANTS** did not appear and were not represented

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**PROCEEDINGS**  
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A MRS JUSTICE STACEY: Good morning.

MR VANDERMAN: Good morning. May it please, your Ladyship. I appear on behalf of the claimants today together with my junior, Ms Klimowicz. She is sitting next to me here.

B MRS JUSTICE STACEY: Sorry ----

MR VANDERMAN: There is no one on the other side that has turned up. I should say that often in these cases ----

MRS JUSTICE STACEY: I think your junior is not the person who is the author of ----

C MR VANDERMAN: I am Mr Vanderman.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: Ms Klimowicz. Our names are both on the skeleton argument.

MRS JUSTICE STACEY: Lovely, thank you.

D MR VANDERMAN: There is no one on the other side. I should say that often in these cases the court will call on the hearing outside the court room in case there is anyone outside.

MRS JUSTICE STACEY: I think that has been done.

MR VANDERMAN: I am very grateful. I was not aware of that.

MRS JUSTICE STACEY: Well, it has.

E MR VANDERMAN: Can I first say that we are very grateful for the court being able to list and hear this application at such speed, so we are grateful for that.

MRS JUSTICE STACEY: Good.

F MR VANDERMAN: In terms of housekeeping, my Lady, can I just check that you have all the right things.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: The hearing bundle and the supplemental bundle, do you have those?

MRS JUSTICE STACEY: Yes.

G MR VANDERMAN: Those both allude to video evidence in the statements. Can I just check ----

MRS JUSTICE STACEY: I have watched both of them. I have watched the video evidence in Miss Johnson's first statement and her second statement.

H MR VANDERMAN: I am very grateful. In case we want to play it in this hearing Miss Barton is poised by the laptop to play it for us.

MRS JUSTICE STACEY: Lovely. Yes, the one thing I was not quite clear about, it may not be relevant, but it was not quite clear to me where the boundary -- Before the painting

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of the line on the ground it was not quite clear to me how the protestors on 15<sup>th</sup> April were trespassing, but that may not be a detail we need to worry about.

MR VANDERMAN: Maybe we will cover that as we go. Hopefully you have the authorities bundle.

MRS JUSTICE STACEY: Yes, I have got that.

MR VANDERMAN: And then you have our skeleton argument. There are three further documents, one of which you may already have, two which I do not think you will have had, but I put them up on your desk. The first is the statement from Mr Allen. We will go that as relevant but it deals with service of the bundles or, should I say, the notification of the bundles and the skeleton argument and it refers to direct action that has occurred since (inaudible), so this week.

MRS JUSTICE STACEY: Okay, because I was not aware that there had been any direct action since 5<sup>th</sup> June.

MR VANDERMAN: That was correct as at the date of the skeleton. Today is Friday. There was direction action on Wednesday and Thursday and again this morning.

MRS JUSTICE STACEY: Interesting.

MR VANDERMAN: So that is Mr Allen's statement.

MRS JUSTICE STACEY: Why are you giving these to me now instead of yesterday. It is dated the 12<sup>th</sup> and you have completely sprung these on me after the hearing had started. You have got my clerk's details, I think, you have got the court details.

MR VANDERMAN: Yes, my Lady.

MRS JUSTICE STACEY: When were you expecting me to read these?

MR VANDERMAN: I apologise if this has not got to you otherwise.

MRS JUSTICE STACEY: I do not know if you tried to get them to me. There is no side to the question.

MR VANDERMAN: I think it is a very brief witness statement just dealing with the notification ----

MRS JUSTICE STACEY: That does not answer my question. What steps were taken to bring these to my attention or serve them at court or, I do not know, did you put them on the CE-File before I walked into court?

MR VANDERMAN: May I just turn my back, my Lady?

MRS JUSTICE STACEY: Please. (Pause)

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MR VANDERMAN: My Lady, none of those steps were taken. It was finalised yesterday evening and so ----

MRS JUSTICE STACEY: And you do not think I would have wanted to read it before 10.30 this morning, because the difficulty is that I have come into court on the understanding that there had been no further direct action since 5<sup>th</sup> June which raises a number of issues about whether an injunction is at all appropriate, given that the threat of an injunction may have served its purpose and I am now faced with a completely different set of circumstances that I would have liked to have known about long before I walked into court.

MR VANDERMAN: I can only apologise, my Lady. I do not know if you would like some time to go and read the witness statement.

MRS JUSTICE STACEY: I will not take time now, but it means it will certainly lengthen the hearing ----

MR VANDERMAN: I understand.

MRS JUSTICE STACEY: -- and the period of reflection prior to making of any decision.

MR VANDERMAN: I understand. The other two documents, one is a response from Thompsons which was received yesterday responding to our letter of 9<sup>th</sup> June and you will see that they are essentially content with the approach we take in the amended draft order.

MRS JUSTICE STACEY: I do not think they are saying they are content. They are saying that they are not going to make any further comments which is different.

MR VANDERMAN: They do not take any further express objection.

MRS JUSTICE STACEY: Yes. I think precision and clarity is important.

MR VANDERMAN: The final document is a leaflet that was being circulated today by the defendants or at least by those protesting at -- I believe it was being distributed at Bernard Road which is a site which has not yet been the subject of direct action, but there were protests taking place there this morning and these leaflets were being handed out. The reason to show you is to show that they are clearly aware of the hearing here this morning.

MRS JUSTICE STACEY: Yes, okay. Thank you.

MR VANDERMAN: My Lady, there are eight points in my proposed route map. Some of them will be taken relatively briefly, but there are eight points if I could just outline those to you. No. 1 is the land. No. 2 is notification. No. 3 is the campaign. No. 4 is

A the real and imminent risk of harm. No. 5 is looking at the draft order. No. 6 is the legal tests. No. 7 is submissions on why those are satisfied and no. 8 is a sweep up, full and frank disclosure section. Dealing then, first, with the land, if I go to the plans, they start at page 40 of the hearing bundle. The Lumley Street depot is at page 41.

B MRS JUSTICE STACEY: If it helps, I have had a chance to read all the papers that were served up until 10.30 this morning in advance and would it help you to identify -- I do not mind which way we do it, but if it helps you I can identify the matters that I am most anxious about.

C MR VANDERMAN: Of course, yes.

D MRS JUSTICE STACEY: Shall I start with -- It is very interesting in the strike action and the interplay between the picketing provisions and -- There is very little in your skeleton and I have read the document that you have authored on protest injunctions and it does not deal with anything to do with industrial relations, so one thing that is puzzling me is that my understanding under section 234 of the Trade Union and Labour Relations (Consolidation) Act is that strike or any industrial action injunctions have got a limited time period before a second ballot is needed for them to have the protection from the industrial torts under the golden formula and the only letter in the bundle does not appear to have any correlation to (a) what is said to have been the picket outside the Lumley depot and (b) deal at all with the balloting and notification provisions under the trade union legislation and I am just puzzled about that. So I am hoping you can help me a bit with it.

F MR VANDERMAN: Maybe I can answer that by reference to the code, because the code ----

MRS JUSTICE STACEY: The code does not answer it, because the code is for an authorised picket, is it not, under the legislation?

G MR VANDERMAN: I think our answer is that the nature of this trespass and nuisance are torts that the claimant is entitled to come to court and (inaudible), regardless of other provisions that ----

H MRS JUSTICE STACEY: Of course I understand that, but I also am entitled and full and frank disclosure requires disclosing the context, because reasonableness and proportionality and Articles 10 and 11 are going to be very much in play in this case and I do not have a full picture, because if we look at this one letter -- Let me see if I can find it. There is one letter from Unite to Veolia which talks about a period of industrial action that is three days and it relates to July 2024, so I am just absolutely mystified as to

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how we are nearly 10 months on and I think I am entitled to know about it, so it is not really an answer to say, "Oh well, look over here, because this is just a nuisance trespass injunction". I obviously think it is about more than that or else I would not have asked the question.

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MR VANDERMAN: I understand.

MRS JUSTICE STACEY: So if you could deal with that directly I would be most grateful.

MR VANDERMAN: My Lady, I am not sure if this is going to answer your concerns and maybe I will have to go away and get instructions on this, but I have copies of the Code of Practice here ----

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MRS JUSTICE STACEY: Yes, I am very familiar with the Code or Practice. Do not worry, not everyone is a specialist in this area, that is no criticism, it is not meant to be a memory test, but can you answer my question on the balloting requirements and the ----

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MR VANDERMAN: I will not be able to answer your questions on balloting requirements. My submission would be that regardless of any lawful balloting or striking action that the trespass or nuisance in relation to the claimant's land is something that the claimant is entitled to come to court and seek an injunction over.

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MRS JUSTICE STACEY: I would like some instructions on what the status is of the picketers who are the authorised picketers. It just seems very odd in a case like this which is a trade dispute, the source of the concern, the reason for the protest is a trade dispute to do with collective recognition.

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MR VANDERMAN: Yes.

MRS JUSTICE STACEY: So a court is entitled to be informed a bit more about that by reference to the statutory provisions and the normal industrial relations legal landscape.

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MR VANDERMAN: Yes, I understand that. I hear that you are very well aware of the Code of Practice and I will seek instructions on the point you have just raised. Before I am able to do that can I just refer to certain aspects of the Code of Practice, unless that would not be helpful, my Lady.

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MRS JUSTICE STACEY: We are just talking at cross purposes.

MR VANDERMAN: I understand.

MRS JUSTICE STACEY: My understanding, you can tell me if I am wrong, is that Veolia is a bystander to some extent in this dispute which is between two TUC affiliated trade unions and Veolia may or may not have views as to which union they would prefer to have a recognition agreement with, but they have got one with the GMB ----

MR VANDERMAN: Yes.

A MRS JUSTICE STACEY: -- and the GMB does not want Unite to be recognised and it is up  
to GMB and Unite to sort it out between themselves and which one Veolia is willing to  
recognise, but under the statutory provisions of recognition -- I am very familiar with  
B this, because I used to be a Deputy Chair of the Central Arbitration Committee and I  
have read the decision and know that the application was very uncontroversially rejected  
because of the existing bargaining arrangements with a different independent trade union  
and I do not have any information about whether there has been an attempt to apply the  
C derecognition processes and I probably do not need to know, I am not criticising you for  
that, but, as I understand it, from reading Miss Johnson's statement there is no wish to  
challenge the -- I think she describes three categories of people involved in the  
recognition campaign or dispute.

MR VANDERMAN: Yes.

D MRS JUSTICE STACEY: Let's keep it as neutral as possible. The first one is the sort of  
official picket, so my initial question arises from that. If it is an official picket where is  
the authority under the trade union legislation. My understanding -- it is possible that  
E you are right, but it is really for me to decide what is going to be relevant and relevant  
context and understanding of the picture before deciding whether or not injunctive relief  
is either just or convenient and the court should have had that background, because it is  
central or might be central, but, as I understand it, Miss Johnson does not consider that  
F anything unlawful has been done by the official picket. She does not anything unlawful  
has been done by the sort of general supporters and the only group in Veolia's sights are  
the people who are trespassing, if that is what they are doing, on the land and walking  
around in front of the lorries.

MR VANDERMAN: Yes.

G MRS JUSTICE STACEY: Yes?

MR VANDERMAN: Yes, that is exactly right, it is just that third category.

MRS JUSTICE STACEY: It is just that third category. Anyway, why don't I stop talking  
and let you carry on with your submissions.

H MR VANDERMAN: My Lady, I can turn round and seek instructions on the status of the  
picketers.

MRS JUSTICE STACEY: I suppose it is the ----

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MR VANDERMAN: You have our point in respect of the first two categories, because we are not seeking a judgment ----

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MRS JUSTICE STACEY: Please do not take this as criticism, but I suspect you are not -- It is quite a niche area and I do not know if any of the solicitors you have brought to court today are in the employment department or if they are all just in the litigation department ----

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MR VANDERMAN: I do not know for sure, but I suspect they are not.

MRS JUSTICE STACEY: But Veolia will have been taking legal advice if industrial action ballots have been issued. Employers always check to make sure that all the formalities have been complied with and it is just very mysterious to me, but maybe they know ---

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MR VANDERMAN: I will turn and ask them in a moment. You have our point though in respect of the third category, just those individuals, stopping it. They are a different category to the other two groups.

MRS JUSTICE STACEY: Yes.

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MR VANDERMAN: In respect of them the status of the picket actually is irrelevant is our submission.

MRS JUSTICE STACEY: Okay, I have got that.

MR VANDERMAN: Can I turn my back for a moment.

MRS JUSTICE STACEY: Please. (Pause)

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MR VANDERMAN: My Lady, my client who is sitting behind us is Head of HR, so she has some understanding of these issues. We are just asking the question about the status of the picket and she is trying to retrieve information about when the last ballot was, but, in her mind, there is nothing controversial ----

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MRS JUSTICE STACEY: They have been on strike since July 2024 and they are still on strike?

MR VANDERMAN: That is my understanding, yes.

MRS JUSTICE STACEY: But the balloting protection only allows -- So they have just ignored any legal requirements.

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MR VANDERMAN: My Lady, all I can say is that my instructions are that there is nothing - - (Pause) I am hearing and you probably heard as well that they are re-balloting every 12 weeks.

MRS JUSTICE STACEY: Okay, that will be right then, so fresh notices are being served, but again it is information that should be before the court.

A MR VANDERMAN: I apologise.

MRS JUSTICE STACEY: It is not your job to give evidence through whispered third parties.

B It is evidence that should have been supplied to the court, does raise a question about the full and frankness of the disclosure and one of the things, of course, that I would have been interested to know about is whether the support for the dispute is growing or dwindling in the balloting results, because on one analysis if you look at it, the direction action, the time period is dwindling, not escalating, in terms of how long they are stopping or slowing down the lorries for.

C MR VANDERMAN: It is true that that period is decreasing, but the number of days has been increasing.

D MRS JUSTICE STACEY: I understand that, but the level of support within the work force or within the Unite membership would have been a relevant factor, so when I come into court understanding that there has been nothing happening since 5<sup>th</sup> June, I see that the amount of time spent engaged in what you say is unlawful conduct is reducing in terms of the numbers of hours on the days it takes place, then it becomes relevant, but now the landscape has changed completely and I have been taken by surprise and I do not like that.

E MR VANDERMAN: I can only apologise for that, my Lady. I am sorry about the failure to provide the information before this morning. In terms of the previous point ----

MRS JUSTICE STACEY: So you say that the action took place what day after the ----

F MR VANDERMAN: 11<sup>th</sup> and 12<sup>th</sup>, so Wednesday and Thursday.

MRS JUSTICE STACEY: Okay and it is now Friday, so that really is very dilatory on your part.

MR VANDERMAN: I can only apologise for that.

MRS JUSTICE STACEY: Okay, let's see if I can move on.

G MR VANDERMAN: We had the eight points in my road map, my Lady. The first one was the land. You indicated that you had already seen those documents. There is the question of the plans and the underlying interest that fall behind that. We have set that out in the skeleton argument with references to the Land Registry documents. I do not know if it would be helpful for me to take you to those.

H MRS JUSTICE STACEY: I am happy for you not to.

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MR VANDERMAN: I am grateful. The second point is then on notification. That is the second part of my road map. We deal with that from paragraph 10 of our skeleton. You will see at paragraph 10 we quote from the *Wolverhampton* case.

MRS JUSTICE STACEY: Again, I am not troubled by that. Does Mr Allen's statement give information about the -- This document that has just been handed up to me, is that referred to in the witness statement?

MR VANDERMAN: No, my Lady ----

MRS JUSTICE STACEY: So I have got no evidence to support -- You have just give me a piece of paper.

MR VANDERMAN: My Lady, that was ----

MRS JUSTICE STACEY: You are seeking an order that anyone who is in breach of whose names you do not know would risk putting themselves in criminal contempt and you think it is all right just to hand up a random bit of paper and you give evidence about where this came from and what it is. I am afraid I assumed when you handed it to me that it was part of Mr Allen's statement.

MR VANDERMAN: No, that was received a matter of an hour before the hearing and that is why -- If it is of no assistance, because it has not been given up by way of witness statement, if it is not admissible then I accept that, but we just thought it might be of assistance to the court to see ----

MRS JUSTICE STACEY: But the problem is I have not got any evidence, not even a handwritten note saying, "I am so and so, this was handed out at such and such a place" and it is not your job to give evidence.

MR VANDERMAN: No.

MRS JUSTICE STACEY: We really need procedural rigor in cases like this that could result in people going to prison.

MR VANDERMAN: Yes, I understand, my Lady, and if given the circumstances in which it has been handed up you find it not of assistance ----

MRS JUSTICE STACEY: How can I -- Put yourself in my shoes. How can that be of assistance to me?

MR VANDERMAN: My Lady, all I can say is, and I have done these cases many times, and often there are late developments like this and on previous occasions courts have found it of assistance. That is all I can say, but I understand that technically that is not procedurally the way to proceed.

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MRS JUSTICE STACEY: I think the rules are there to be adhered to, you are not here to give evidence and if you had wanted to adduce it all it needed was a short statement which could have been handwritten about -- Otherwise it is just not right or fair.

MR VANDERMAN: We can undertake to provide that statement if that would be of assistance.

MRS JUSTICE STACEY: No. I think you either have the statement -- You have got four lawyers in the room and you have not got a witness statement telling me what that document is about, so, therefore, I have no evidence about what that document is about.

MR VANDERMAN: I understand.

MRS JUSTICE STACEY: So I have to, therefore, disregard it, do I not?

MR VANDERMAN: If that is the course the court prefers to take then I accept that.

MRS JUSTICE STACEY: You tell me under the Civil Procedure Rules what the alternative would be.

MR VANDERMAN: One approach you could take is that we undertake to provide a witness statement that exhibits that and explains how it has arisen.

MRS JUSTICE STACEY: But you have not told me who the witness statement would be from, you have not given me ----

MR VANDERMAN: I can turn my back and ask who will make that statement.

MRS JUSTICE STACEY: It is now 11 o'clock and we have made no progress.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: You asked for a hearing as quickly as possible, we have accommodated that ----

MR VANDERMAN: Yes, I am grateful for that.

MRS JUSTICE STACEY: -- and you have not -- I do not know if this was handed out yesterday or Wednesday.

MR VANDERMAN: No, this was received, as I have said, a matter of an hour before the hearing or so.

MRS JUSTICE STACEY: You may have received it then, but I do not know when it was doing the rounds at a depot.

MR VANDERMAN: No, it related to the protest this morning. It says, "Today on Friday 13<sup>th</sup> June".

MRS JUSTICE STACEY: Okay, it is not a significant -- Procedural rigor is significant, but this particular document is not going to be determinative of anything.

A MR VANDERMAN: I think that is probably right.

MRS JUSTICE STACEY: But I hope you are taking on board my points.

MR VANDERMAN: Of course. My Lady, on notification, you may have indicated that this was not troubling you.

B MRS JUSTICE STACEY: No.

MR VANDERMAN: There are both the claimant application documents and the hearing notice and Mr Allen's statement then deals with the bundles and the skeleton argument. At paragraph 10 he refers to the relevant documents that emerged subsequently and at paragraph 11 he talks about those being uploaded to the website by 10 a.m. on 10<sup>th</sup> June that was and then paragraph 12 talks about the email addresses being notified that those documents are now online.

C MRS JUSTICE STACEY: I note they did not attach any of the recipients -- We know that Unite received them, because their solicitors have corresponded, but I am interested that you only directed them to a website rather than enclosed the documents.

D MR VANDERMAN: The reason why that is often done is because sometimes the documents are so large to avoid the risk that there is a bounce back because the email document over a certain size cannot be reached. It is considered to be more safe or that is the approach taken to follow the link so that there is no question that those documents can be accessed and if there was a problem with the link no doubt the recipients will state that.

E MRS JUSTICE STACEY: There was no attempt to serve a hard copy. You have got the address of Unite Sheffield's office and you have obviously got dealings with Shane Sweeting and there was no attempt to deliver a hard copy?

F MR VANDERMAN: There was no attempt to do that, my Lady.

G MRS JUSTICE STACEY: That would have been best practice, would it not? For future reference.

MR VANDERMAN: I understand.

H MRS JUSTICE STACEY: This is not the usual protestor injunction, because your case is that the protest is in connection with a trade dispute and you know who the participants in that and you are not alleging that Unite is directly implicated in the action you are seeking to injunct, but you know the -- So I would have expected ----

MR VANDERMAN: All I can say in a previous case -- These cases arise a lot in the environmental context, for example ----

A MRS JUSTICE STACEY: They are not operating out of a trade union office with whom your client has a relationship of some sort, if not for recognition on pay, hours and holiday.

MR VANDERMAN: Yes, I understand.

B MRS JUSTICE STACEY: That is why these things are always fact sensitive.

B MR VANDERMAN: Yes. So you have those two methods of notification. Over the page in paragraphs 13 to 15 Mr Allen refers to an updated schedule 1. That refers to the plans. The only difference is that on plan 1 the Registry number was slightly wrong, so nothing about the plan has changed, the red line has not changed, it is just the Land Registry number was wrong, as pointed out by (inaudible), so that is why an updated version was provided. My Lady, whilst we are here you might see section (c), reference to further direct action at paragraphs 17 to 20.

C MRS JUSTICE STACEY: Whose face is it on the mask of many of the protestors?

D MR VANDERMAN: That is a good question, my Lady. I do not actually know.

MRS JUSTICE STACEY: You do not know either, okay.

MR VANDERMAN: It is the Group Chairman, my Lady.

MRS JUSTICE STACEY: Okay.

E MR VANDERMAN: So that is point 2, notification. Point 3 is the campaign and direct action. This is summarised from paragraphs 17 to 27 of our skeleton argument. We have already discussed the origin of the dispute, but the fact that since April it has escalated into something different. If we go to Miss Johnson's first statement ----

F MRS JUSTICE STACEY: Again, you can be confident I have read everything.

F MR VANDERMAN: I understand. The reason to take you to that was to show you the photos, because they graphically describe the different categories of individual. In the background you will see those pickets and those peacefully protesting. This is at page 73 of the bundle. At the top of page 73 you see those on the picket line and protesting but away from the entrance and over the page at 76 if you zoom in -- I am sorry, I am zooming in, obviously you cannot zoom in, but at 76 you can see those in front of the trucks who we say are the category 3 and the others across the road who are in category 1 and 2.

H MRS JUSTICE STACEY: Yes. So the guy in the pink jacket, you are saying he is on the wrong side of the road.

MR VANDERMAN: Yes, he is trespassing. The others are on the highway.

A MRS JUSTICE STACEY: The yellow high viz jacket is group 3 as well who is just on the right side of the line.

MR VANDERMAN: Yes. My understanding is that the claimants' workers are in orange high viz and the other categories are in yellow high viz ----

B MRS JUSTICE STACEY: Yes, I worked that out. Okay.

C MR VANDERMAN: So then turning to the incidents of direct action, you will be aware that they were taking place at Lumley Street depot and workshop and Tinsley Park Road and also Beeley Wood, although that does not form part of the injunction, one of the contingency sites, but not taken place yet at Bernard Road or Beighton, so two of the five sites. You will have seen a summary of the incidents at paragraph 25 of our skeleton and also in tabular form in Johnson2, page 15 of the supplementary hearing bundle. Can I just point out that these two places, the skeleton and the supplementary bundle at page D 15, Johnson2, they are the best places to get the information on the delay, because there were some slight mistakes in Johnson1 which have been corrected.

MRS JUSTICE STACEY: Okay.

E MR VANDERMAN: You will see that we refer to photos and videos in the skeleton which refer to the incidents. There are some entries which you will have noticed were not referenced. Those have been now included in the supplementary hearing bundle. You may have already seen them, but I have them here in supplementary hearing bundle references for you for those dates if that would be helpful. It may be because you have already seen them that it is not necessary, but I have the hearing bundle references for F some of the other dates; for example, 1<sup>st</sup> May, for seven of the other dates.

MRS JUSTICE STACEY: Where are we looking at?

G MR VANDERMAN: In the supplementary hearing bundle you can see from paragraph 19, although in Johnson1 she did refer to 1<sup>st</sup> May and 20<sup>th</sup> May, essentially there were not photos and videos of those dates, so those have now been corrected. They are in the body of her statement. They are also in the exhibits, they are bigger in case they are more helpful and there are also now videos, so my suggestion was whether you want those references or whether you are content, because you have seen them in the body of H the witness statement. (Pause) My Lady, I think you indicated you have seen all the videos, so I do not know if it would be helpful to show you one or a smattering of the videos or whether we can take it that you have seen them and you do not need to do that.

MRS JUSTICE STACEY: I have watched them.

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MR VANDERMAN: I am grateful. So as well as those dates in my skeleton, my Lady, you have seen from Mr Allen's statement direct action that took place on Wednesday and Thursday this week. So, my Lady, my submission on that, far from there being any disavowal of an intention to carry out the direct action in the face of this claim, this application, there has actually been a doubling down, in my submission.

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MRS JUSTICE STACEY: Doubling down, is that going a bit far? Why is it doubling down?

MR VANDERMAN: You have now seen all the documents showing that what they are doing in no uncertain terms is unlawful, that the claimants are now going to go to court to stop them doing that and they have carried on doing it.

C

MRS JUSTICE STACEY: It has not escalated though, has it or has it? I do not know. I do not know how many bins have been dropped on 11<sup>th</sup> and 12<sup>th</sup> June.

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MR VANDERMAN: By reference to how many days they have been doing it per week and the amount of time, it has been relatively constant since towards the end of May. Before that it was approximately more like two days a week, so over the course of April to now it has increased over time as opposed to decreased, in my submission.

E

MRS JUSTICE STACEY: The Tinsley Park Road exit, that was one of the areas before and after 6<sup>th</sup> June, was it not?

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Okay. Thank you.

F

MR VANDERMAN: My Lady, that is the campaign and direct action, no. 3. In terms of 4, I then move on to harm to the claimants.

MRS JUSTICE STACEY: Can we just spend a little bit more time on the campaign. I need a bit more chapter and verse on how often you say the trespass has occurred since the line was painted.

G

MR VANDERMAN: At Lumley Street since the line has been painted most of it has been on the public highway, with the same effect but it has been on the public highway, since the yellow line has been painted.

MRS JUSTICE STACEY: Yes, so almost all.

H

MR VANDERMAN: I would say almost all, yes. I think that is fair, yes.

MRS JUSTICE STACEY: So you have done a good job in stopping trespass. You have stopped trespass by painting the line.

MR VANDERMAN: The claimants' objective is to be able to say leave its land and so whether it is technically ----

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MRS JUSTICE STACEY: You have got the odd footstep on the wrong -- All I could see was the guy in the pink jacket on one occasion ----

MR VANDERMAN: Yes, yes.

MRS JUSTICE STACEY: -- within inches and I will be wanting to know your submissions on this, but I think since the line was painted and to your clients' absolutely credit, obviously people are not quite clear where the road starts and where the private property stop, you have painted a line and it has pretty much solved the problem, so I am not feeling particularly concerned about that ----

MR VANDERMAN: There are two points to that. One is that is only in Lumley Street. At Tinsley Park they are still trespassing on the claimant's land.

MRS JUSTICE STACEY: Have I seen the evidence for that where it is clear the ----

MR VANDERMAN: You have the plan showing the land interest and you have the videos and the photos showing where they are standing.

MRS JUSTICE STACEY: But that has not been married up for me to see.

MR VANDERMAN: I am happy to do that. That is the first point. We can do that in a moment. The second point is the claimants' objective is to leave its land. It does not matter which pigeon hole you put their cause of action in. If, for example, let us say, on one of my hypotheses the court grants an order just in relation to the highway but not in the trespass action, all that would happen is that the claimants(sic) would then start trespassing on the land again. They would not be on the public highway, but they would be trespassing on private land, so arguably not ----

MRS JUSTICE STACEY: But why would they if they have not been doing it since you painted the lines?

MR VANDERMAN: Because their objective is to stop trucks coming out of the land and do they will do that presumably whichever way they can and if they cannot do it on the public highway because there is a court order stopping them from doing it they may, they may very well, I would say there is a real imminent risk of them then changing tactics and going on to the private land where the court order does not bite.

MRS JUSTICE STACEY: That is speculative.

MR VANDERMAN: My Lady, we would say based on all the evidence there is a clear real imminent risk of it happening, a strong probability. On the Tinsley Park point, if I can take you to that plan ----

MRS JUSTICE STACEY: What page reference is that?

A

MR VANDERMAN: The plan is at page 44 of the hearing bundle.

MRS JUSTICE STACEY: Okay.

MR VANDERMAN: The red line mimics where (inaudible) is, the same line as the land interest, so that is the third claimant's registered leasehold interest where the red line is and you can see the actual Land Registry plan if you go to 202.

B

MRS JUSTICE STACEY: So I need to marry it up with the video evidence.

MR VANDERMAN: My Lady, yes, or the photo evidence.

MRS JUSTICE STACEY: I will look at the photos. So where on the photos?

C

MR VANDERMAN: So, for example, if you go to supplementary hearing bundle page 125 -

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MRS JUSTICE STACEY: Yes.

MR VANDERMAN: -- you can see that they are on that part of private land. It looks like the private land extends basically all the way ----

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MRS JUSTICE STACEY: Where the tarmac colour changes.

MR VANDERMAN: Yes, pretty much. So that is a continuing trespass, but my submission is with respect to Lumley Street there is a strong probability that if they were allowed to trespass -- I am sorry, by "allow" I mean if the court does not order that they must not trespass, then they will move from the highway back on to the private land and have the same effect as now.

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MRS JUSTICE STACEY: So if you were a pedestrian walking along Tinsley Park Road, how would you get from one side of the entrance to the yard to the other without going on the land of Veolia?

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MR VANDERMAN: Miss Johnson's statement has photographs of the entrances of each site so I wonder if it is easier to look at it by reference to that picture.

G

MRS JUSTICE STACEY: Do you have to cross the road and walk on the pavement on the other side?

MR VANDERMAN: My Lady, it might be easier if you go to page 57 of the hearing bundle. The picture at the bottom is the Tinsley Park Road entrance and you can see the pavement running across.

H

MRS JUSTICE STACEY: Yes, so my question is how would you get from one side of the entrance into the site to the other without trespassing on Veolia's land?

MR VANDERMAN: One answer might be that if you are walking on the pavement -- Have you got this picture, my Lady?

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MRS JUSTICE STACEY: I cannot see ----

MR VANDERMAN: This is page 57 of the hearing bundle.

MRS JUSTICE STACEY: Yes, I am looking at that.

MR VANDERMAN: If you are on the pavement on the left hand side and walk straight in a parallel line to the pavement on the other side that may well still be ----

MRS JUSTICE STACEY: You would have to cross the road.

MR VANDERMAN: No, this area may still be highway. The bit that is next to the pavement may very well be highway land and it is the bit in front of that that might be private land.

MRS JUSTICE STACEY: So if we look at where the people are on page 125 there are three -- If you were to draw a straight line from the width of the pavement to the other side of the gate, most of them are on what you say probably is the highway.

MR VANDERMAN: My Lady, I am not sure I accept that, but they are walking in a circle, they are not standing still, so they are all trespassing.

MRS JUSTICE STACEY: You have not thought to draw a line across this one?

MR VANDERMAN: We have not done that yet, no.

MRS JUSTICE STACEY: Okay. So it is wrong to say it is where the tarmac changes colour.

MR VANDERMAN: I think that is correct.

MRS JUSTICE STACEY: Yes, okay.

MR VANDERMAN: I think there is a small section which ----

MRS JUSTICE STACEY: I know I asked you a leading question, but do not just say yes to me, because it is easier.

MR VANDERMAN: No, I understand. We have seen from the entrance that there is probably a strip of the pavement now that moves across which is highway land as well, but quite where that is is a bit difficult to say.

MRS JUSTICE STACEY: So it is jolly hard for the protestors, is it not, to know without a line being painted?

MR VANDERMAN: My Lady, this is part of our point that, for them, in my submission, it does not make a difference whether they are on private property or highway land as long as they succeed in their objective which is to stop vehicles coming out and so, in my submission, it would be an artificial approach in terms of the causes of action in this specific case to chop them up in that way. It might be helpful to look at some of the videos in Tinsley Park, my Lady. Can you just give me a moment. (Pause) If you go to EJ2 105 I think my colleague will put this on the screen. [Video played] EJ2 105, this

A does not tell us anything we do not already know, but it shows you the nature of where they are walking. In my submission, that is all private land. It can be shown again.

[Video played]

MRS JUSTICE STACEY: It is arguable, is it not? Anyway, I have got your point.

B MR VANDERMAN: My Lady, I was going to move on to harm, unless you have any further questions on the direct action itself.

MRS JUSTICE STACEY: No, you can move on to harm.

C MR VANDERMAN: This is summarised at paragraph 28 of our skeleton under five headings and you can see the five headings are harm to the Sheffield residents, financial costs, impact on Veolia employees, disruption to other third parties and health and safety concerns. Those are set out in detail in Johnson<sup>2</sup> and Macphail<sup>1</sup>, but I think your Ladyship has indicated that she has read those, so I do not know if there would be much use in going to those. There are two points I want to talk about in slightly more detail. D One is on bin non collection, what the numbers mean, and the other is financial loss. Perhaps if I deal with those and you can say if you ----

E MRS JUSTICE STACEY: On the impact on the Veolia employees, I know they are on a task and finish work pattern, but I was not clear when their contractual hours would end if they had not finished the task.

MR VANDERMAN: I believe it is 1.30 p.m.

MRS JUSTICE STACEY: Okay.

F MR VANDERMAN: I am sorry, my Lady, 2.30 p.m.

MRS JUSTICE STACEY: Again, it should really have been in the witness statement, because task and finish is a very familiar concept, but it does not really help to know that they normally get their rounds done by 12 without knowing what things would look like on a bad day.

G MR VANDERMAN: Yes, I understand. The answer is 2.30 and so part of the harm is having to do overtime after that time ----

H MRS JUSTICE STACEY: It is two, is it not? It is having to work longer than you normally work because you are normally efficient and get it all done by 12 and then you can go home and then it is having to do overtime which may be welcome or it may be unwelcome, we do not know.

MR VANDERMAN: Yes. Miss Johnson's evidence is that it is having a negative effect.

MRS JUSTICE STACEY: Yes, keep going.

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MR VANDERMAN: On the number of bins not collected you will have seen in the evidence and the skeleton we have set out how many bins were not collected on each day, but we have been careful not to say as a direct result of the direct action, because we cannot point to a specific link.

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MRS JUSTICE STACEY: Again, what I am anxious about is proportionality and substantiality of harm and Article 10 and Article 11 and, as I understand it, and just tell me if I have misunderstood this, normally 70,000 bins are collected each day and since 15<sup>th</sup> April which is about two months pretty much, April, May, June?

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MR VANDERMAN: Yes, about 8 ½ weeks.

MRS JUSTICE STACEY: A total of just over one day's worth of bins have been collected up to two days late. Comparisons with Birmingham are absolutely absurd.

MR VANDERMAN: My Lady, at this stage that is probably right, but the concern is about escalation.

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MRS JUSTICE STACEY: But when have you ever known a recognition dispute to escalate? Birmingham are facing a £8,000 pay cut. I do not know if that is definite, but that seems to be the suggestion in the press, that the issue is about having pay reduced by £8,000. I do not know if that is right, but anyway it is a substantial issue.

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MR VANDERMAN: Yes.

MRS JUSTICE STACEY: This is about whether one union or another union is recognised for collective bargaining. You have had lawful industrial action which has been authorised and conducted under the correct procedure with enough members voting in favour for nearly a year with seemingly no impact whatsoever and one day's worth of bins not collected. It does not look to me like an escalating pattern. It looks like, if anything, fizzling out and it may well be that the injunction application has given vigour and life to the campaign.

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MR VANDERMAN: My Lady, in terms of comparison to Birmingham, obviously we do not have to show that it is as bad as Birmingham or that the harm is anywhere near that level to be able to claim an injunction.

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MRS JUSTICE STACEY: No, in which case why bang on about it so much in the evidence?

MR VANDERMAN: Because in the evidence one of the defendants refers to this could be the next Birmingham.

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MRS JUSTICE STACEY: Of course that is what a General Secretary of a trade union is going to say. Of course that is what the protestors are going to tell the police liaison officer, knowingly perfectly well that that will get reported back. It is propaganda.

MR VANDERMAN: My Lady, that is something that we hear and that is evidence that we provide to the court.

MRS JUSTICE STACEY: Yes, absolutely.

MR VANDERMAN: We have taken the defendants at their word. Obviously it may be treated one way or the other depending what is said.

MRS JUSTICE STACEY: But this is the real world and there is -- Anyway, carry on.

MR VANDERMAN: My Lady, I think if the defendants are saying that and we hear that from the police then we have to take that seriously, as an organisation we have to take that seriously, my clients, in terms of disruption to ----

MRS JUSTICE STACEY: Or you are just being played, but anyway.

MR VANDERMAN: My Lady, in my submission, it is difficult for us and for the court to look behind that in circumstances where the defendants have not turned up and questioned that. We have to go on what we hear from what they say and what they do. In terms of the impact on the residents of Sheffield, you have seen the evidence of how many bins are not collected on those days and the first thing I want to say is obviously we cannot marry it up directly. You have evidence in Johnson2 that on one of the days, 30<sup>th</sup> May particularly, the number was high, because there was a lot of drivers striking that day, so that number is a contribution of probably many things, including the striking which is not part of this injunction, but also the direct action which is.

MRS JUSTICE STACEY: Again, you see, this is another problem is that I have not been given -- I think there is one letter. Let me just see if I can find it in Miss Johnson's exhibit about the notice. The first notice of the industrial action, can you help me with the -- Here we are. It is document 29, so it is 281 of the internal numbering within the exhibit.

MR VANDERMAN: This is the supplementary?

MRS JUSTICE STACEY: No, no, the main one.

MR VANDERMAN: Are you talking about the letter from Unite?

MRS JUSTICE STACEY: A letter from Unite to the employer.

MR VANDERMAN: Yes, that is 373 in the hearing bundle.

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MRS JUSTICE STACEY: So it is discontinuous action for three days, 29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>. How many days is it? It does not say what the hours are. Of course, the court is then not able to ----

MR VANDERMAN: It is five days, I think.

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MRS JUSTICE STACEY: What I am not able to identify or form any view of really without knowing more is how much of the dropped bins is due to the protest and how much is due to the lawful industrial action which is protected from the industrial torts, so that is a really significant factor in being able to understand significance and harm.

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MR VANDERMAN: We understand that and it is very difficult to separate those out.

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MRS JUSTICE STACEY: No, but you have not even given me the tools to understand it, have you, because you have not said, "These were the dates when the Unite bin men on strike, these were the number of strikers" or any wherewithal to make an educated guess or how you have made an educated guess. You have just said, "We accept not all the 72,000 dropped bins are due to the protest that we say is unlawful" and so I say how much do you think it is to do with it, but there is no evidence, so it is you having to give evidence and I am in the dark.

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MR VANDERMAN: We have tried to give you a flavour of it in paragraph 35 of Miss Johnson's statement. That is a random week at the end of March in which there was no direct action before the direct action occurred.

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MRS JUSTICE STACEY: Okay. I do not know whether the discontinuous strike action was taking place in that week or not, because all I know, the only evidence I have got is of discontinuous strike action for four days in July and early August 2024. Do you see what I mean?

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MR VANDERMAN: You have that letter, because that was the start, but I think Miss Johnson's evidence is that they have been on strike since July 2024.

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MRS JUSTICE STACEY: Yes, but what does being on strike mean? That could be, "We are not going to" -- It does not help me know if it is an all out strike at one end or very occasional strike with "Every Friday 13<sup>th</sup> I am not coming to work". I do not know.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: You do not know either.

MR VANDERMAN: I understand that, but there is the evidence at paragraph 35 to show what a normal week might look like during the direct action. Miss Johnson's evidence is that strike action has been taking place since July. Your Ladyship's point is, "I do not

A know the extent of the strike action in March of during this period” and there is not  
evidence of the specific nature of the strikes at this time, that is correct, but we still do  
B rely on the numbers giving an indication of the harm being caused to the Sheffield  
residents as a result of direct action, even though it is difficult to put a precise figure on  
it. My Lady, we say a small amount of harm over a large number of people as compared  
to a focused harm on the smaller category of individuals, the former should not be  
discounted just because of a small amount of harm. The fact it is occurring over a large  
number of individuals, that is significant, in my submission.

C On financial cost, can I make this point as well. You will have seen in the  
statement that it has been borne by the second claimant. The claim for trespass and  
private nuisance are obviously land based torts and in terms of relevant sites it is the first  
and third claimants that own the freehold and leasehold interests. The evidence shows  
D that they are not the ones who are suffering most of the financial loss, it is the second  
claimant, albeit it should be remembered that the second claimant obviously operates  
from these sites so it will inevitably enjoy a licence to be on the site, so they would have  
a good claim in trespass, but not in private nuisance, because they do not have exclusive  
E possession of the land. In terms of financial loss, we say that is an important part, but  
we did want to flag up that point in case it was not clear.

F Those two points aside and just going back to the harm for a second, a further  
important point, as your Ladyship has already adverted to, the claimants have taken  
steps to try and mitigate the effects of the direct action itself, but, in my submission,  
those have largely failed. You will have seen from the steps taken in Miss Johnson’s  
G first statement at paragraph 86 to 88 if we could quickly go to that. It is at page 84 of the  
hearing bundle. You will see the steps on paragraph 87 that she refers to including the  
health and safety notice at (a) and sending it to Shane Sweeting at (b) and then at (c) the  
contingency site plan using various sites. (d) and (e) are the fencing. You may have  
seen a video of the Heras fencing which did not work and so they then moved to  
H painting a line at (e) and at (f) is a response plan of the police. You see what she says at  
paragraph 88 about the police response. I will come to that when I deal with the Human  
Rights points, but you can see what she says about not being able to rely on the police  
response. That is point 4 on harm.

Point 5 is then looking at the draft order in case one is granted by the court.

MRS JUSTICE STACEY: Yes. I am afraid I have got quite a lot to say about that.

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MR VANDERMAN: I understand. You will have seen the slightly amended draft order in the supplemental hearing bundle.

MRS JUSTICE STACEY: Yes, which simply takes on board the Unite lawyers' point, does it not?

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MR VANDERMAN: Exactly, yes. So the penal notices as they stand. We have a description of the defendants on the header. You can see: "Persons unknown who, in connection with strikes organised by Unite the Union" ----

MRS JUSTICE STACEY: Yes, "in connection with". Help me with how helpful and precise that is.

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MR VANDERMAN: My Lady, it is to cater for individuals who carry out the direct action. The reason why that is there is to narrow the class of defendants, because if you took that wording out then it could be any ----

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MRS JUSTICE STACEY: No, it is whether it is too wide to identify the link between the action and the -- "In connection with" is very loose terminology.

MR VANDERMAN: I understand.

MRS JUSTICE STACEY: Can you think of something ----

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MR VANDERMAN: Often when drafting this wording that kind of wording is used and the only reason that is is because it avoids individuals who you are trying to capture evading the order by claiming, if there was more precise wording, "Well, I am not doing that because I am not a defendant" and the "in connection with strikes organised by Unite the Union" is slightly broad, but that is to capture people from evading the protection that we want. So in terms of other wording that is narrower ----

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MRS JUSTICE STACEY: What sort of connection do you think is going to be sufficient to capture someone within the injunction?

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MR VANDERMAN: I am sorry, my Lady, I am not sure I understand the question.

MRS JUSTICE STACEY: What do you mean by "in connection with"?

MR VANDERMAN: Well, they may not be strikers, they may not be employees, they may be random people brought in from other cities, so we do not want to use the word "who are striking" ----

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MRS JUSTICE STACEY: No, no, I do not think that Miss Johnson is alleging that the -- The strikers can only be the employees of Veolia ----

MR VANDERMAN: Yes.

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MRS JUSTICE STACEY: -- and presumably if Veolia knew that their employees were doing these things there would be disciplinary proceedings ----

MR VANDERMAN: Quite.

MRS JUSTICE STACEY: -- so Miss Johnson is very, very careful and I absolutely understand why she has drafted the statement in the way that she has, because she is not seeking to escalate things and it is a model of clarity and precision.

MR VANDERMAN: But it arises from the fact that we do not know who these individuals are.

MRS JUSTICE STACEY: No, I know you do not know who they are, but I am putting myself in the shoes of someone who might be in the area and wanting to know what level of connection it is that would put you at the wrong side of this rather than the right side and you say it does not matter, but I am interested to press you a bit on that, which is what I am doing.

MR VANDERMAN: My Lady, if it is someone who is supporting the strikes, it obviously captures them. It does not capture someone who is a member of the public. I suppose your Ladyship may be wanting to narrow the wording to show that it is someone who is directly supporting the strike in some way. It may be that the concern can be avoided another way by adding the words “deliberately” somewhere in there.

MRS JUSTICE STACEY: It is your job to come up with wording that is proportionate and reasonable ----

MR VANDERMAN: Yes, I understand.

MRS JUSTICE STACEY: -- and not vague. It is not my job to draft things for you.

MR VANDERMAN: No, I understand that entirely.

MRS JUSTICE STACEY: I have discussed the point with you and you can decide if you want to suggest alternative wording or not.

MR VANDERMAN: If my Lady is troubled with that wording then we can definitely go away and have a think as to how it can be narrowed, but I am just trying to understand the sorts of people that might be caught that the court is concerned about it catching.

MRS JUSTICE STACEY: Okay.

MR VANDERMAN: Then in the description of the defendants you also have the sites referenced and the description also includes the trespass and nuisance element without referring to those legal terms of ours. You then have a penal notice which is our standard

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and recitals, the last of which includes a definition of “the land”. Paragraphs 1 to 2 are the injunctions themselves.

MRS JUSTICE STACEY: So there has been action at Lumley Street depot and workshop which seem to be -- It is just at the depot that there has been the action.

MR VANDERMAN: It has been at both.

MRS JUSTICE STACEY: It has been at both and at Tinsley Park. There has been nothing at Bernard Road, has there?

MR VANDERMAN: There has been no direct action so far at Bernard Road or at Beighton.

MRS JUSTICE STACEY: So what makes you think ----

MR VANDERMAN: My Lady, in my submission, there is a strong probability that if they are prevented from taking direct action at the three sites they will move to other sites. In the evidence there is a statement of one of the individuals talking about going to (inaudible) and so in many of these cases ----

MRS JUSTICE STACEY: What harm could they do if they went to those other sites?

MR VANDERMAN: It is the same as they are doing at Tinsley Park Road.

MRS JUSTICE STACEY: As I understand it, all the vehicles are at Lumley Road. Tinsley Park is the dry recycling.

MR VANDERMAN: Yes. At both of the other sites, as well as Tinsley Park, they go to offload the things that they have collected during the bin route and ----

MRS JUSTICE STACEY: But the videos of Tinsley Park do not show anything -- There are no lorries trying to go in or out on the video, is there?

MR VANDERMAN: There is one photo of that, of a lorry trying to go ----

MRS JUSTICE STACEY: Trying to go in?

MR VANDERMAN: Trying to leave, I think.

MRS JUSTICE STACEY: So there is just that one.

MR VANDERMAN: In the evidence there is that one photo, yes.

MRS JUSTICE STACEY: That is where they are standing really close, nose to nose with the windscreen.

MR VANDERMAN: The photo is from inside the cabin of the truck and you can see them right there.

MRS JUSTICE STACEY: Yes, but it is much less effective, is it not, than stopping them from leaving their premises?

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MR VANDERMAN: The defendants' objectives are much less effective in going to those sites as opposed to Lumley Street?

MRS JUSTICE STACEY: Yes. Is that right? I do not know. That seems to be the case.

MR VANDERMAN: The Lumley Street sites are where they ----

MRS JUSTICE STACEY: Where they are all based and they all have to leave there and Beeley Street was the contingency in case they had to gather, but that is not really working, because they know about it.

MR VANDERMAN: The other sites are where they drop off and go back on their routes.

MRS JUSTICE STACEY: But it has been escalating at Tinsley Park Road, has it not?

MR VANDERMAN: It has been quite frequent, yes, at Tinsley Park Road recently.

MRS JUSTICE STACEY: But only recently.

MR VANDERMAN: Yes, yes. So, in my submission, there is a strong probability that if those sites are injuncted but not the other two then they will just move to the other two. Paragraphs 1 to 2 of the injunction mirror what we have been discussing. The first is the trespass and the second is the private nuisance.

MRS JUSTICE STACEY: Because, again, this is where it is really difficult not having the details of the overall shape of the industrial action and not knowing about the balloting results of the regular industrial action ballot that has been taking place, because if they are re-balloting every 12 weeks -- It is no good just drip feeding information to me now, because this is information that your client will have had since July 2024. I can see why you have not handed up this document to me before 6.30(sic) this morning, because you did not know about it, but you are asking for three years. Again, it is very, very unusual for strike action to last for what will be four years by the time this injunction if it is granted comes to an end.

MR VANDERMAN: Yes, I understand. One approach has taken the *Drax* case. It is different facts.

MRS JUSTICE STACEY: But that is the trouble. There is very little recent industrial action protest injunction.

MR VANDERMAN: That is true, but in *Drax* -- All courts when they deal with this kind of injunction are mindful they do not know how long it is going to last, but they want to be able to ----

MRS JUSTICE STACEY: But, you see, in an industrial action case you probably will know how long something is going to last, because you will know about trade disputes and you

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will know about the legislation that makes it pretty hard for unions to keep things going and the fact that people who are on strike do not get paid.

MR VANDERMAN: Yes, my Lady, that is true. The *Drax* approach does not actually have an end date, it just having a rolling annual review, so I do not know if that is something -  
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MRS JUSTICE STACEY: No, no, absolutely, that makes it much worse. You have got to take a minimalist approach. Where rights like this are at stake and you are suggesting that people can be imprisoned for breaching an order who are not present in court today you have to be absolutely scrupulous to keep things to the absolute minimum.

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MR VANDERMAN: Yes. We are, of course, under the obligation to come back to the court and update the court if there is a material change of circumstances, so the court can ----

MRS JUSTICE STACEY: But I have not been told quite a lot of material circumstances even before today's hearing of the type of information that I have already indicated.

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MR VANDERMAN: I understand my Lady has heard during the course of this hearing that there is a ballot every 12 weeks, so I do not know if that is more the sort of time frame that would be acceptable to the court, potentially in terms of potentially a review mechanism of that kind of period or a shorter period in any event, because obviously the claimants' main objective is to stop the direct action and if the court is more comfortable with a much shorter period then of course that is something that ----

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MRS JUSTICE STACEY: I am sorry to bang on about it, but the point is that the direct action is happening because some Unite members are on strike, yes? So the direct action will stop when the strike ends.

F

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: That is the crucial bit of information, crucial sort of context that the court has not got, so it may be I am not able to make a decision today because I need that information in order to properly understand and for you to have complied with your full and frank disclosure requirement.

G

MR VANDERMAN: I understand.

H

MRS JUSTICE STACEY: I am not suggesting that there has been a deliberate obfuscation, but it is just difficult for people -- Given that most of the protest injunctions and I notice there is no reference at all in the book that you have put in the authorities bundle about industrial action protest and yet, you know, there is so much literature on it and all in the private law text books which are full of it and it is an important context in this case.

A

MR VANDERMAN: I understand. I understand the court's desire to have that information, I understand that.

MRS JUSTICE STACEY: Then the question is whether I need that information in order to make a decision today.

B

MR VANDERMAN: My submission on that is it may be that this is one of those cases where there is a first hearing and a return hearing and that the court has enough information in front of it today to make a much shorter injunction to stop immediate direct action and come back at a later date with the further information and with a further application for the longer injunction. That is the course that we would be proposing if the court is concerned about granting an injunction today on that basis.

C

MRS JUSTICE STACEY: Shall we park that for the moment and just say I am concerned about the wording in paragraph 2. It seems too vague to me. I think you accept, do you, that it is perfectly lawful for conversation and discussion and leaflets through windows and so on of lorry drivers to inform and educate about the dispute.

D

MR VANDERMAN: That is not the sort of behaviour we are trying to prohibit.

E

MRS JUSTICE STACEY: No. So how can that happen if -- I think "slow down" -- Again, it is not my job to do your drafting, but "obstruct or block", surely, "slow down or otherwise interfere with the access or egress". It is vague, it does not make exactly clear what -- If you are saying any slow -- It is very hard for anyone to know what the court -  
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F

MR VANDERMAN: The reason why that specific word is in there is because, let us say you put one word in there (inaudible) or just "prevents" then the experience is that those carrying out direct action will find another way to achieve the same end, but using a different objective. So, for example, -- I am thinking on my feet, but if they dig a hole in the ground, on one view they would not be blocking access.

G

MRS JUSTICE STACEY: They would be obstructing though, would they not?

MR VANDERMAN: Yes, that is probably right, but that is one example. There may be other examples that ----

H

MRS JUSTICE STACEY: I am just telling you that unless you can persuade me otherwise "slow down or otherwise interfere" -- "Interfere", what does that mean? What does it cover? Why use "access or egress when entering or exiting" when you are trying to keep language simple? We are in the 21st century now, not the 19<sup>th</sup> century. When did you last use the word "egress" in normal conversation?

A

MR VANDERMAN: My Lady, I do not know if you are actually asking me that question, but I get the point and we can change it to “entering or exiting”, there is no problem with that. In terms of “prevent, slow down” (inaudible) change it to “block or obstruct”, again, I turn around but I cannot see there being an issue with that. Yes. Paragraph 4 is the annual review, but based on the discussion today that may be something that goes for the purposes of this hearing.

B

MRS JUSTICE STACEY: Do not take discussion about precise wording as an indication.

MR VANDERMAN: Of course.

C

MRS JUSTICE STACEY: But it is just telling you that as drafted it would be too vague to grant an order.

MR VANDERMAN: I understand. Some of those concerns are hopefully dealt with at paragraph 5, the leaflets through the window.

D

MRS JUSTICE STACEY: But that is why again, you know -- I do not want to be too nit picky, but can you not see that there is an immediate tension between paragraph 5 and paragraph 3 if you are keeping “slowing down” in the wording, because they just potentially do not align, do they?

E

MR VANDERMAN: I think based on what we have been able to come to that is not an issue.

MRS JUSTICE STACEY: Anyway, you have conceded now that “slow down” and “otherwise interfere with” is too wide.

F

MR VANDERMAN: The purpose of the wording in paragraph 5 was to take precedence over 3, so to the extent that something is in 5 it would fall within paragraph 2, but it is academic now because we are content with “block or obstruct”. The other provisions -- There is liberty to apply, paragraph 6.

G

MRS JUSTICE STACEY: The next one that I have scribbled all over is 11. Why not documents attached or hard copies? I think since you know the address of Unite you should be serving them -- Serving is not the right word, is it, because you are letting them know so that it can be brought to the attention as a way of informing the persons unknown, but surely they should be entitled to hard copies since you know the offices of Unite, both for Sheffield and their head office.

H

MR VANDERMAN: We are content to provide hard copies to Unite, yes. My Lady, just to be clear, you have referred to 11, would that be 10 and 12 as well or just 11?

MRS JUSTICE STACEY: Hang on a minute, I am looking at 11(b), I think, am I, which says “sending an email” to the email addresses and so I am saying ----

A MR VANDERMAN: We would put a different number saying “hard copies to Unite”, I think.

B MRS JUSTICE STACEY: Yes. You have not put anything in about -- You are saying you want an injunction for three years and you are suggesting that the notice be put up only once. Surely there needs to be a mechanism. I know it is laminated, the ones that are up there at the moment are laminated, are they not?

MR VANDERMAN: I think so. In case they get damaged, you mean?

C MRS JUSTICE STACEY: They could get damaged, they could get removed. You have got to build in if an injunction is granted for some sort of monitoring to check that they are still in place and you have got to identify level of frequency and what is required for that.

MR VANDERMAN: My Lady, is monitoring every month ----

D MRS JUSTICE STACEY: You are the one seeking the order.

MR VANDERMAN: I know, but in terms of ----

MRS JUSTICE STACEY: So you tell me what you are proposing.

MR VANDERMAN: If it was a month would that be sufficient?

E MRS JUSTICE STACEY: You need to tell me what you are offering. A month seems -- I do not know. You can tell me. What you have got to think about is how you can make sure it is still legible and up there and how often you think it is reasonable. You put forward your proposal as to what you think is reasonable in terms of monitoring.

F MR VANDERMAN: Yes, I understand.

G H MRS JUSTICE STACEY: Paragraph 14 causes me enormous concern. You are standing there telling me that it is -- Let us say you have got an eager young recruit to socialist action who has been to university and gone to the committee meeting and said, “Oh yes, I am definitely up for that, I am going to stand outside Veolia and how dare they, I am shocked and I am fired up and I am enthused” and they come along in May 2028, by then under your proposals there has been no monitoring, there has been no checking and the young student who probably was only about 16 when you put the sign up has got no idea about the injunction and you are saying it is absolutely fine for them to go and put on the mask of the chairman of Veolia and walk around outside the gate and be sentenced to a term of imprisonment for contempt of court when the sign had been removed by some cheeky person a week or so after it had been put up.

MR VANDERMAN: I understand ----

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MRS JUSTICE STACEY: This is the difficulty, is it not?

MR VANDERMAN: I hear those concerns, but ----

MRS JUSTICE STACEY: So why put it in the draft order?

MR VANDERMAN: My Lady, because in countless other cases what you find is that defendants remove the sign and then they could claim that it was never notified to them, so it is to stop that deliberate evasion or the frustration of the court. But I hear those concerns, because the person who takes it down may not be the person who then comes along, but, in my submission, monitoring would, as best as possible, take care of that.

MRS JUSTICE STACEY: Veolia staff work at these sites, so it is not as if it is a hard job to go and check that the signs are still up, is it?

MR VANDERMAN: The monitoring will be put in. In terms of 14 itself that is to stop people from taking it down deliberately, then carrying out direct action and saying there was no sign there, so they have not breached the order.

MRS JUSTICE STACEY: Can you have a think about the wording of it, because I do not much like it and I have identified what my concerns are.

MR VANDERMAN: After that you have schedule 1 which are the plans, schedule 2 is the undertakings given by the first and third claimants and schedule 3 the email addresses.

MRS JUSTICE STACEY: You will have to have a schedule 4 of the postal addresses you are going to -- I do not know what they are obviously ----

MR VANDERMAN: You mean for Unite?

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: If it is just one postal address we can just include the address in the body of the order.

MRS JUSTICE STACEY: The General Secretary probably does not work out of the same office as the regional officer.

MR VANDERMAN: I had not understood you to say that we send a hard copy to each of those officers.

MRS JUSTICE STACEY: I do not know where -- The point is I think that Unite is entitled to hard copies.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Again, it is for you to tell me what will be the most effective way to get to the people who need to get it.

MR VANDERMAN: Yes, I understand that.

A

MRS JUSTICE STACEY: Since their solicitors have been in touch with you, why not serve the solicitors? Not serve, but send them to them.

MR VANDERMAN: Notify ----

MRS JUSTICE STACEY: Notify.

B

MR VANDERMAN: That might be the easiest way ----

MRS JUSTICE STACEY: That might be a better way actually. Yes, that might be the more sensible way or you could ask the solicitors who it would be appropriate -- whether they would prefer to get it or whether it should go to the officers.

C

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: But these things need to be checked.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Right. Where are we?

D

MR VANDERMAN: My Lady, that is 5, the draft order. No. 6 is legal tests and that is relatively -- The framework is relatively straightforward. You see at paragraph 29 in my skeleton I refer to the *Wolverhampton* case and then the *Valero* case which followed shortly afterwards in a protest context, *Wolverhampton* itself being a traveller case. It may be worth very briefly going to the *Valero* authority. That is at authorities bundle tab 8, page 195.

E

MRS JUSTICE STACEY: So were there defendants represented in *Valero*, because this problem always is, is it not, when the judge has only had one side?

F

MR VANDERMAN: My Lady, this is Mr Justice Ritchie, and he has been involved in many persons unknown cases, so he is a very experienced judge in this area. In terms of that specific hearing, the problem with these cases, my Lady, is that because there have been a number of interim injunction hearings and I think this is one of the first review hearings, but this is a summary judgment application hearing, so at this hearing the defendants did not appear. At previous hearings I think there were some appearances.

G

MRS JUSTICE STACEY: I see you have given me a number of really very recent authorities . Have you just taken the four most recent authorities off Westlaw? How did you select them?

H

MR VANDERMAN: Which authorities are you precisely talking about, my Lady?

MRS JUSTICE STACEY: I am thinking of the later ones actually. I suppose what raised my eyebrows is at tab 18 you have given me a Mr Justice Garnham one from 28<sup>th</sup> May which is not really directly relevant.

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MR VANDERMAN: My Lady, the reason I cite that is because it is the first time it is said that the *Vastint* is not a freestanding test and has been subsumed into the *Wolverhampton* framework.

MRS JUSTICE STACEY: Right.

MR VANDERMAN: That is why I have cited them, that is why that is (inaudible).

MRS JUSTICE STACEY: Okay.

MR VANDERMAN: The two *Cambridge* cases are in there because ----

MRS JUSTICE STACEY: Because they were well represented by the defendants and Liberty intervened ----

MR VANDERMAN: Yes, exactly. Those cases have specifically been cited because they deal with the issue of description of defendants, whether they need to be described at all or whether they should be described in the way that we have done in this case and many other cases and also the case of a permission for contempt applications. That is why those cases have particularly been cited. They also obviously have other stuff in there that is relevant. For example, they involve statements about nuisance and trespass, but primarily the reason why they are in there is because they are recent cases dealing with those two issues which are relevant to this case or which I need to raise with the court under full and frank disclosure. The (inaudible) case is an Article 10 and 11 case. That is the first case that says Article 10 and 11 may be automatically not engaged with if you carry out direct action or criminal direct action, so that is why that is there. The *MBR Acres* case is a recent case. That is there again on the issue on description of persons unknown. It was a nuisance claim and a trespass claim, so there are some bits in there which basically copy and paste from all of those cases about what those things mean.

MRS JUSTICE STACEY: The 2021 *Free the Beagles* case, you have not put that before me.

MR VANDERMAN: That is the *MBR*, that is the same case, the *MBR* case.

MRS JUSTICE STACEY: Yes, but there are a lot of things that Nicklin J says there about Article 10 and 11 that I do not think have been overtaken by other cases or undermined by *Wolverhampton*, because I find that a useful authority.

MR VANDERMAN: I understand. No, I have not cited that. I was not ----

MRS JUSTICE STACEY: But do you agree that is still good law?

MR VANDERMAN: My Lady, I cannot remember what it says, so I cannot make that submission or make that concession, because I do not know what it says.

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MRS JUSTICE STACEY: Do you think *Ziegler* -- obviously that was a criminal case, but do you agree with Sewell at paragraph 45 in tab 17 that that is still appropriate in considering injunctions such as this?

MR VANDERMAN: My Lady, *Ziegler* is a criminal case about obstructing the highway.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: The question in that case was whether a factual enquiry needed to be undertaken in terms of Article 10 and 11, so the proportionality (inaudible) and the Supreme Court said that it did.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: The reason we have gone into detail of the Human Rights Act is because for the purpose of the public highway we accept that that balance has to be undertaken by the court.

MRS JUSTICE STACEY: Yes, okay, thank you, that is helpful. Yes, keep going.

MR VANDERMAN: We were on *Valero* at page 195 of the authorities bundle. You will see at paragraph 6 there is a summary of what this was about. This was Just Stop Oil and Extinction Rebellion at oil refineries and terminals. At 7 you see that various interim prohibitions were granted throughout the period from 2022 to 2023 and then at paragraph 8 the claimants applied for summary judgment and for a final injunction for five years. So that is how this case arises. If we then go to paragraph 52 which is at page 215 it sets out the powers of the court, first, in terms of the 1981 Act and then you can see in paragraph 54 it refers to trespass:

“In law a landowner whose title is not disputed is *prima facie* entitled to an injunction to restrain a threatened or apprehended trespass on his land ... In relation to *quia timet* injunctions ... the Claimants must prove that there is a real and imminent risk”.

That is quoted from the *Ineos* case. In paragraph 55 he refers to *Canada Goose*.

*Canada Goose* was the Court of Appeal case that set out the test before *Wolverhampton*.

MRS JUSTICE STACEY: Yes. Does *Wolverhampton*, do you say, supersede it? *Ineos* is still good law, is it not?

MR VANDERMAN: You said *Ineos*. Do you mean *Canada Goose*?

MRS JUSTICE STACEY: Yes, sorry, *Canada Goose* is still ----

A

MR VANDERMAN: There is a lot of overlap. There is one specific aspect on which it was overruled, but in terms of the tests they all feed into *Wolverhampton* and *Wolverhampton* comes out with very much, I would say (inaudible), but given that it is the most recent Supreme Court authority ----

B

MRS JUSTICE STACEY: You can really pretty much dispense with the previous cases.

MR VANDERMAN: I think that is probably right.

MRS JUSTICE STACEY: Yes and just rely on the very clear test in *Wolverhampton*.

C

MR VANDERMAN: I think that is right. *Wolverhampton* is a traveller case, so it is not a protest case and at the end of that case they do say, "This is all for travellers, some of it may be relevant to other cases, but for protests the same overall principles apply but the court will have to do what it does on a case by case basis".

MRS JUSTICE STACEY: What did *Ritchie J* say, because his was a protest?

D

MR VANDERMAN: This was a protest case. At 56 he quotes at length from *Wolverhampton* and you can see then at 57 he says:

E

"I conclude from the rulings in *Wolverhampton* that the 7 rulings in *Canada Goose* remain good law and that other factors have been added. To summarise, in summary judgment applications for a final injunction against unknown persons ('PUs') ... the following 13 guidelines and rules must be met"

F

and he talks about "a final injunction against PUs is a nuclear option in civil law". In paragraph 58 he basically synthesises *Canada Goose* and *Wolverhampton* into those 15 requirements and those are the 15 requirements that we have in our skeleton argument gone through.

G

MRS JUSTICE STACEY: Yes.

H

MR VANDERMAN: So that is a summary judgment application, so in terms of standard of proof it may be slightly different, depending on what is being sought. If we are seeking a final injunction at this hearing, which we are, then the elevated threshold comes in. It will not be a serious to be tried threshold, it will be a high one, the normal high one, the civil standard, but if, for example, the court were not going to grant a three year injunction, it is going to be a temporary injunction for a short period of time before returning, then it would revert, in my submission, back to a serious issue to be tried test, because it would be properly holding the ring as opposed to a final injunction.

A MRS JUSTICE STACEY: That sort of Ritchie formula in paragraph 58 does not appear to have been followed exactly by all the cases since, but you say they have not departed from it.

B MR VANDERMAN: There is often a reference to him. In the *Cambridge* case, for example, Mr Justice Sewell preferred to use Mr Justice Julian Knowles's analysis in HS2 which was before *Wolverhampton*, but he found that helpful, because he said *Valero* was the summary judgment application and so was not particularly appropriate to or at least was not exactly matched on to the type of application in that case, but in many other cases the Ritchie factors have been the ones that courts have gone through. I am just looking at *London City Airport*. (Pause) Yes, in *London City Airport*, paragraph 33, Mr Justice Julian Knowles: "I am satisfied that the *Valero* and *Multiplex* factors are satisfied here for the following reasons". *Drax* was a Mr Justice Ritchie case.

C MRS JUSTICE STACEY: So you have just chosen the cases where you appeared ----

D MR VANDERMAN: I was not (inaudible), my Lady. I have been in some of these cases, not all. That is more a function of the fact that I am in a few of these cases as opposed to just choosing the ones I am involved in.

E MRS JUSTICE STACEY: Yes, keep going.

F MR VANDERMAN: Then this is no. 7, this is my submissions.

MRS JUSTICE STACEY: Sorry, Nicklin, that very lengthy Nicklin judgment, which bits did you say were relevant.

F MR VANDERMAN: There are two main issues. One is descriptions of "persons unknown", whether you need one at all or whether it should just say "persons unknown".

MRS JUSTICE STACEY: Oh yes. This is a bit different, is it not? Anyway ----

G MR VANDERMAN: It is not different at all, my Lady, but we do not think that that is what the case law says you should do.

MRS JUSTICE STACEY: No. The second point?

H MR VANDERMAN: The second point is whether the court should impose a permission filter for a contempt of court application, so a parallel sentence in the order that says that the permission of the court is required before a contempt of court application may be made, something to that effect.

MRS JUSTICE STACEY: The other thing in his order was an obligation for the defendant to have known about the injunction. If you look at his order in your tab 14 at paragraph 1: "Any person with knowledge of this order must not".

A MR VANDERMAN: Yes, that is an express departure from the other cases, Court of Appeal cases ----

MRS JUSTICE STACEY: Would that not make sense?

B MR VANDERMAN: My Lady, I think Mr Justice Nicklin's experience from that case was through the prism of the claimant in that case having brought several trivial and  
C inappropriate contempt applications for which they were severely criticised and which then led to even before this injunction the mechanism by which permission would have to be required before the claimants brought a contempt application, so, in my submission, Mr Justice Nicklin in his very long judgment you can see was particularly concerned in this case by the approach of the claimants.

MRS JUSTICE STACEY: I had some involvement. I think I was the vacation judge that gave the first injunction in this case, but it seems a sensible addition, does it not?

D MR VANDERMAN: In my submission, no. Other than, I think, this order, none of these cases have that provision. Another reason why they do not have that provision is because it is very hard to prove to the criminal standard that someone has knowledge of something. If they all just say, "I do not know" ----

E MRS JUSTICE STACEY: If you have got your signs on the site being monitored then unless someone says, "I am illiterate in English, how could I possibly have known?", it could be said, "There is a laminated sign on the lamp post over there".

F MR VANDERMAN: Yes. That would be the argument, of course, but it makes it more difficult to prove that someone knows about it. Someone comes along in the morning, someone takes down the sign, another person comes along and stands on the highway, blocks the trucks, "I did not know about it", it raises difficulties.

G MRS JUSTICE STACEY: Then you have got the video footage. This is all on CCTV, is it not? So you have got the video footage of two days before when it was the same bloke wearing the same pink zip up cardigan and the sign was in place. The point I am making and the reason why I am needing to consider this very, very rigorously is anxious scrutiny must always be given to an order made that risks someone going to prison when there are linked Human Rights issues and there just seems to be a slightly cavalier  
H attitude. These are not Smarties being handed out. These are serious court orders.

MR VANDERMAN: Madam, I appreciate that, I understand that, but I do not accept that a cavalier attitude has been brought by the claimants or anyone in this case. We have

A understood our obligations very seriously, we have tried to narrow it down. If it can be narrowed down further we can do that.

B MRS JUSTICE STACEY: How is it taking your obligations seriously to suggest in a draft order that you can put up a sign once and it will be in effect for three years whether or not it has been removed the very next day and it is still legally binding? That is why I am needing to be particularly careful and rigorous to make sure that the court is not being inveigled into doing something it should not.

MR VANDERMAN: I hope we have dealt with that with monitoring obligations.

C MRS JUSTICE STACEY: Why not put that in the draft order? It is lucky that I have had time to think about and prepare for this hearing, because it is not a sort of overnight injunction of some of the similar ones. These are really important matters.

D MR VANDERMAN: I understand, my Lady. In my submission, the knowledge requirement is not something that is standard in these (inaudible) and in the absence of any evidence that that be an issue in this case we submit that it is not necessary, but obviously if the court considers that it is essential then ----

MRS JUSTICE STACEY: You were saying.

E MR VANDERMAN: No. 7 on my road map, these are the submissions, you can see these start at paragraph 31 of my skeleton argument and they follow the framework of the Ritchie judgement in *Valero*. First, two separate causes of action, trespass and nuisance. The defendants if they come on to land are trespassers if they have no licence to be there carrying out direct action and the claimants just need to show they have the better(?) right to possess or occupy which they all do. In relation to private nuisance, that is interference with the ability to access private land adjoining the highway and you can see that referred to authority at 31(b). Mr Justice Sewell in *Cambridge University* refers to *HS2* and that is the better authority for some of the learning on that, but, in my submission, it is relatively straightforward in this case. The very purpose of the direct action is to block the vehicles from accessing the public highway.

G  
H The second point is on full and frank disclosure. The claimants have sought to comply and will continue to comply with that duty and you will have seen a section at the end of my skeleton argument that also deals with it in writing. We will get to that. That is my last point on the road map. No. 3 is that there is sufficient evidence to prove the claim. In my submission, based on the evidence shown to the court there is a real and imminent risk of further direct action by the defendants, conduct which we say they

A have no right to carry out and I refer to the point at paragraph 34 to demonstrate that.  
The duration of a direct act carried on for a large period of time over a number of days  
and no indication that they intend to cease, that since the claim has been brought they  
B have carried on. We discussed the fact that in terms of number of days far from slowing  
down the frequency has increased towards the end of May and you see at (c) in terms of  
statements they have heard from employees, from the police that they intend to carry out  
the direct action until their demands are met. You may have seen the transcript from  
Miss Graham on 11<sup>th</sup> April which is talking about the strike action, but it is talking about  
C escalation as well. In my submission, this falls into the narrative that they will carry on  
going until their demands are met.

MRS JUSTICE STACEY: But is that not what everyone says?

MR VANDERMAN: My Lady, we have to take them at their word, do we not?

D MRS JUSTICE STACEY: No, no, do you? Don't you have to interpret intelligently what  
people mean and the General Secretary -- There is a General Secretary who says, "I  
have got 101 other disputes on the go at the moment, but we are taking this one really  
seriously, honest".

MR VANDERMAN: She did turn up at the site and make a speech.

E MRS JUSTICE STACEY: You saw how many people were there at the rally.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Again, the comparisons with Birmingham are really very far  
F fetched.

MR VANDERMAN: My Lady, there is no comparison to Birmingham here. All that is being  
said is that we are entitled to take their word ----

MRS JUSTICE STACEY: No. You talk about it at paragraph 36. Anyway, I have made my  
G point.

MR VANDERMAN: My Lady, the point that is not on that list is the fact that since -- I have  
made the point that in the authorities they do refer to the fact that there has been no  
disavowal of any intention to carry out direct action, so on receiving the claim the  
defendants may have said, "Well, we are going to stop, we no longer intend to do it or  
H want to slow down" and we have not heard any of that. One reference where that is  
mentioned, that kind of point, is the *Esso* case, this is Mr Justice Linden at tab 6 of the  
authorities bundle, page 112, paragraph 67.

MRS JUSTICE STACEY: But you are saying that the *Vastint* test has been subsumed.

A MR VANDERMAN: I am sorry, they are two separate points. I am relying on this point to  
talk about the probability of someone coming on to the land and so Mr Justice Linden  
says, “Having considered the evidence in the round, however, I was satisfied that the  
first limb of the *Vastint* test is satisfied”. That is about the probability of someone  
B coming on to the land.

C “It would have been very easy for Extinction Rebellion or Just  
Stop Oil to give assurances or evidence to the court that there  
was no intention to return to their activities ... and no risk of  
trespass on the Sites or damage to property by protestors in the  
foreseeable future, but they did not do so. One is therefore left  
with the evidence relied on by the Claimants. This shows that  
they intend to continue to challenge the oil industry  
D vigorously, including by causing disruption”.

So, in my submission, the same applies here.

D MRS JUSTICE STACEY: Yes.

MR VANDERMAN: On this third point can I just deal briefly with standard of proof.

MRS JUSTICE STACEY: Mm-hmm.

E MR VANDERMAN: We have discussed it. I just want to make the point clear that on a  
normal interim injunction case obviously the standard would be serious issue to be tried,  
a relatively low bar, but where you are in effect seeking final relief then obviously that  
F threshold has to be higher, because there is absent any application by the defendants no  
coming back. There is no holding of the ring as such. We say, whatever that threshold  
is, we have satisfied it on the evidence, but you will have seen at footnote 6 of my  
G skeleton argument, that is page 12, we refer to section 12(3) of the Human Rights Act  
and if I could go to that, that is tab 4 of the authorities bundle.

MRS JUSTICE STACEY: I have only got your fifth point there, not the sixth.

MR VANDERMAN: I am sorry, my Lady, it is footnote 6. It is not point 6, it is footnote 6.

MRS JUSTICE STACEY: Okay, footnote 6, sorry, yes.

H MR VANDERMAN: I refer there to the Human Rights Act, section 12(3). It might be worth  
turning that up.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: At page 18 of the authorities bundle you will see 12(1):

A

“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”.

(3) says:

B

“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”.

C

In other words, the purpose of that provision is to raise the *American Cyanamid* test in free speech cases of publication to likely (inaudible). In my submission, that does not apply here because we are not dealing with publication, but it should be said that ----

MRS JUSTICE STACEY: It is the exercise of freedom of expression.

MR VANDERMAN: My Lady, 12(1) is engaged.

D

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: 12(1) applies.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: So 12(2) would apply ----

E

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: -- about notice. But 12(3) is specifically about publication.

MRS JUSTICE STACEY: Okay.

F

MR VANDERMAN: So, in my submission, that would not apply here, but it is important for me to tell you that there are other cases in which it has been found to apply. The most recent cases have effectively found that it only applies if in the course of direct action you are prohibiting someone from giving out leaflets or things which involve some element of publication, but there is a dispute in the case law on that. In those cases where it has been fully argued the cases have tended to say normal expressive protesting does not fall within publication, but there is that dispute. You can see in the footnote I have referred to the relevant part of my book, but the reason why I did not go to town on those cases is because for the purposes of the injunction we were seeking, which was the quasi final injunction, I accepted that the elevated threshold needs to be applied anyway.

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MRS JUSTICE STACEY: You do in this case too.

A

MR VANDERMAN: My Lady, my submission would change if the court took the view that only a very short injunction was appropriate today to hold the ring, because in that case *American Cyanamid* would be back in play.

MRS JUSTICE STACEY: Yes.

B

MR VANDERMAN: Our overall submission is that whatever threshold you apply that we satisfy that.

MRS JUSTICE STACEY: I thought you might say that.

C

MR VANDERMAN: Fourthly, we say there is no realistic defence. There would be trespass on the land committed by the nuisance by deliberately blocking vehicles. There is the Human Rights issue which is a separate factor, so I will deal with that when we get to it. Fifthly, there is a compelling justification for the injunction and the point at this stage of the test is to replace the balance of convenience, so rather than the court asking where the balance of convenience lies, it asks whether there was compelling justification and for that I rely on three points. (1) The claimant wishes to use its own land for important purposes and the defendants are preventing it from doing so without any lawful right to do so.

D

MRS JUSTICE STACEY: Well, not so much preventing as delaying and interfering.

E

MR VANDERMAN: During that period, yes, during that period they are preventing us from leaving our land.

MRS JUSTICE STACEY: That is slightly overstating it, is it not, for the hour or two on the days of the action?

F

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Yes.

G

MR VANDERMAN: (2) The direct action is being carried out to the cost and disruption to the claimants and their staff, the wider public and also at risk to themselves. (3) The claimants have no other practical means of restraining the defendants from carrying out direct action.

H

MRS JUSTICE STACEY: Do they know what has happened to the -- The GMB referred the matter to the TUC under what would be the Bridlington principles in, I think, December of last year. Do they know what stage that process has reached or if Unite are cooperating with the GMB? Again, that would have been information that would have been useful. The other thing is Veolia have presumably got some trade body which will

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have a relationship of some sort with all the public sector unions and what other avenues are being used to resolve the dispute.

MR VANDERMAN: Can I just turn my back, my Lady?

MRS JUSTICE STACEY: I do not want you to give evidence.

MR VANDERMAN: Right, okay. I do not know the answer to that.

MRS JUSTICE STACEY: I knew you would not, but this is what I will need information on.

MR VANDERMAN: So that is compelling justification. Sixthly is ECHR rights. In my submission, that argument must fail and we deal with this in paragraph 38 of our skeleton. In relation to private property it is much more straightforward. Where the case law has got to is that there was no Article 10 or 11 right to enter private property, so even if those rights were engaged (see *Hallam*) they will always be trumped by the property rights of the private land owner. No balancing by the court is necessary.

MRS JUSTICE STACEY: That, I must say, is not quite my reading of paragraph 34 of *Hallam* which I thought was much more tentative than that.

MR VANDERMAN: The first few lines of that were taken from *Halham*, if we go to *Hallam*  
----

MRS JUSTICE STACEY: I know, but you did not complete the rest of the paragraph in *Hallam* when you wrote that.

MR VANDERMAN: It is page 433.

MRS JUSTICE STACEY: It is the second sentence, is it not? “However, we were not referred to any case in which the ECHR has decided that a protestor who commits an act of trespass thereby automatically loses their rights under Article 10/11 altogether”.

MR VANDERMAN: My Lady, that is a question of engagement. That is not a question of balancing. It is the prior question about whether Article 10/11 is even in play, because you see then at the end of 35 -- 35 talks about *Cuciurean* which is a Divisional Court decision which says this categorically and then it says, “That does not assist us” because that did not determine the question of whether Articles 10 and 11 were engaged. That is the question they are talking about in these passages.

MRS JUSTICE STACEY: Sorry, you are going to have to explain that again.

MR VANDERMAN: In terms of the Human Rights analysis there are several steps. The first is are you even in the scope of the Convention, is a Convention right even engaged, are you in the pigeon hole.

MRS JUSTICE STACEY: Yes.

A MR VANDERMAN: So the previous case law was a bit ambiguous about that, ultimately  
saying that it does not matter whether you are technically in or out, because ultimately if  
you are on private land you are never going to succeed. So no one had really grappled  
with the issue of whether it was engaged, including *Cuciurean*. *Hallam* was a criminal  
B case and so presumably it was relevant in some way for it to be engaged, therefore the  
question of whether it was engaged, *Hallam* was saying you do not automatically lose  
Article 10 and 11 just because you carry out direct action, you do not automatically lose  
out. That is not to say that engagement, has your right been interfered with, if it has  
C been interfered with, has it been justifiably interfered with and then you go to  
proportionality. So this is only talking about the very first stage, is it engaged.

MRS JUSTICE STACEY: So you are accepting that it might be engaged.

MR VANDERMAN: Yes, it is an academic debate for us, in my submission, because  
whether or not it is engaged, it cannot succeed when someone enters private land.

D MRS JUSTICE STACEY: Because?

MR VANDERMAN: I think it is in some of the other case law. If you go to *HS2* ----

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: Tab 5 of the authorities bundle.

E MRS JUSTICE STACEY: Which one?

MR VANDERMAN: *HS2*. Tab 5 of the authorities bundle. If you go to page 39 ----

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: -- paragraph 81.

F MRS JUSTICE STACEY: I tell you why it is of interest to me in this case is that what we  
are really looking at is very, very minimal trespass on rare occasions.

MR VANDERMAN: My Lady, I do not accept it is trivial, because ----

G MRS JUSTICE STACEY: Well, this refers to “continued trespass” and all the travellers  
cases are about people moving in and this is about in the Lumley site on one occasion  
someone being about a foot the wrong side of the line on a road, some of which is the  
highway and some of which is private land and on Tinsley Street, again it is quite hard to  
see where the distinction is, demarcation between what is the highway and what is the  
H land, so I think different issues could arise.

MR VANDERMAN: There are two points. One is in terms of Tinsley Park, my submission  
is they are clearly on private land. As they walk through the circle they are clearly on  
private land at many points of that walk. In terms of Lumley Street, there were lots of

A examples of trespass until the red line was painted. Since then it has been much more minimal, but as I submitted earlier, there was a strong probability that if the trespass was not prohibited that they would continue to trespass in order to achieve their aims.

B MRS JUSTICE STACEY: But you have not needed an injunction up until now to stop them trespassing at Lumley Street, because the line drawn on the road has achieved the desired effect 99% of the time.

MR VANDERMAN: We do not accept that, because ----

MRS JUSTICE STACEY: You have not given me the evidence to say otherwise.

C MR VANDERMAN: What I mean by that is the desired effect was to stop blocking of access. To the claimant it does not really matter whether they are on our land or off our land. If access is being blocked that is the harm that we are trying to avoid and so it does not matter to the claimant -- Clearly it does not matter to the defendants, it does not matter to the claimants where they are if they block access to the land and to have that distinction, in my submission, would be artificial. But the other point that my Lady was making is it is happening on certain days and certain mornings and not continuously. The duration is irrelevant. When it comes to balancing it is a relevant factor, but when it comes to the argument on private land, it is simply not a relevant factor, because the rights of the landowner will always trump the rights of any protestor. There is no freedom of forum in terms of process when it comes to private land and when you look at paragraph 81 ----

F MRS JUSTICE STACEY: Why did Mr Justice Knowles feel it necessary to refer to continued trespass? He would not have used the word "continued", would he, if he did not need to put it in there?

G MR VANDERMAN: He then quoted *Cuciurean* which is the case which is used a lot with this, so if I could just refer you to the *Cuciurean* quote. *Cuciurean* itself is not in the bundle, but it is the reference that is regularly used in these authorities.

MRS JUSTICE STACEY: Is it what Knowles J has put in his ----

MR VANDERMAN: That is the relevant section, yes.

MRS JUSTICE STACEY: Yes.

H MR VANDERMAN: At the top of page 14(?) and onwards.

MRS JUSTICE STACEY: Yes. (Pause) So 45 of *Cuciurean* is the right -- He has quoted hugely from this. Can you just give me the sentence.

MR VANDERMAN: Sorry, my Lady, the sentence?

A MRS JUSTICE STACEY: There are paragraphs and paragraphs that he has set out here.

MR VANDERMAN: It is paragraph 45.

MRS JUSTICE STACEY: Okay. So go no further than that. Okay. (Pause) Good. Your next point.

B MR VANDERMAN: My Lady, back to *HS2*, go to page 82. We have just seen him setting out the principles in *Aplizo(?)*, page 82, paragraph 196:

C “I am satisfied there would be no unlawful interference with Article 10 and 11 rights because, in summary: (a) there is not right of protest on private land, and much, although not all, or what protestors have been doing has taken place on such land”.

So he says that quite categorically and we say that follows from *Cuciurean*.

MRS JUSTICE STACEY: Keep going.

D MR VANDERMAN: My Lady, in my submission, the situation on private land is relatively straightforward. On public land the balancing analysis does have to be carried out, so you will see at paragraph 40 the relevant -- There are certain tests which are probably not particularly controversial here. One is 40(a), could it be prescribed by law, which E we say it would be, because there would be a court order by effectively a statutory power. (b) Is it in pursuit of a legitimate aim? We say, yes, protecting our property F rights. Then (c) before we get to the numbered bullets you will see that we submit that the aims are sufficiently important to justify interference, there is a rational connection G and there is a fair balance. That is just the Human Rights test that you apply. So we have sought to set out the factors as to why we say the balance is on our side and why clearly Article 10 and 11 rights cannot justify -- Do you justify an interference with the Article 10 and 11 rights and we set those out from (c) onwards. The first is the nature of H the conduct, so you will have seen in the cases the direct action as opposed to persuasion is not at the core of Article 10 and 11 and is given much less weight in the balancing process. Then that was said in *Hallam* as well, albeit in *Hallam* he talked about criminal direction action which we say this is, but any direct action to the extent that you were forcing someone to do something as opposed to persuading them. For example, the picketing, you might say that is peaceful persuasion, not seeking to (inaudible), that may well be at the core of Article 10 and 11. This is not, the direct action.

MRS JUSTICE STACEY: Are you saying this is criminal trespass?

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MR VANDERMAN: My Lady, we set out at 5 the criminal offences we say are being committed.

MRS JUSTICE STACEY: Yes, I am just trying to understand the last sentence of paragraph 1.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: I do not understand what you mean by that.

MR VANDERMAN: What we mean by that, my Lady, is the defendants in their trespass and the actions they are carrying out are committing criminal offences and that makes the weight to be afforded to their Article 10 and 11 rights weaker.

MRS JUSTICE STACEY: Is that what this sentence says, the existence of criminal trespass?

MR VANDERMAN: My Lady, that sentence is not quoting but saying ----

MRS JUSTICE STACEY: Those words are not at all in paragraph 36 of *Hallam*. Well, it says they are involved in criminal trespass, but I do not understand where criminal trespass comes into this case.

MR VANDERMAN: My Lady, in my submission, what the court has said -- It is basically a quote from paragraph 36: "Criminal trespass significantly weakened the protections afforded by Articles 10 and 11". So that is what is said in *Hallam*.

MRS JUSTICE STACEY: But this case is not criminal trespass, is it?

MR VANDERMAN: In my submission, the point being made there is to the extent that someone is carrying out criminal activities then that further weakens the right (inaudible) Article 10 and 11.

MRS JUSTICE STACEY: But there is no suggestion that this is criminal trespass, is there?

MR VANDERMAN: My Lady, the submission is that the criminal offences at 5 ----

MRS JUSTICE STACEY: So what is the point of this sentence here then?

MR VANDERMAN: My Lady, that is quoting from *Hallam* and, in my submission, that means criminal offences (inaudible) less weight when weighing up the Article 10 and 11 rights.

MRS JUSTICE STACEY: Okay. It is a slightly confusing reference. You can understand why I say that. Okay.

MR VANDERMAN: That is no. 1, the weight to be given to the Article 10 and 11 rights in this case, in my submission, is low. (2) The significant harm being caused to Veolia staff, Sheffield residents, as well as the risk of harm to the defendants themselves.

A

MRS JUSTICE STACEY: Define “significant” for me. What is the difference between significant and insignificant?

MR VANDERMAN: The indication of the number of bins being dropped, the financial cost, the effect on employees of Veolia. That all adds up, accumulates to significant harm.

B

MRS JUSTICE STACEY: So what would be insignificant? What do you say in practical terms would fall below the threshold on the facts of this case?

MR VANDERMAN: My Lady, I do not know. My submission is that in this case there is significant harm, but the court will need to take a view about whether it considers it is significant harm, but my submission is it is significant harm.

C

MRS JUSTICE STACEY: “Significance” is defined differently for different purposes. Has anyone attempted to put a ----

D

MR VANDERMAN: My Lady, it is not possible to put a quantitative or objective tag on that. It is a submission that the harm is great, but I cannot give you a number or something more objective.

E

MRS JUSTICE STACEY: No or any case law that has talked about what level of impact -- Most of the cases involve things that are far more extreme and far more widespread than the facts in this case. This is marginal on its facts compared to all the authorities you have relied on.

F

MR VANDERMAN: My Lady, we do not accept that. This is very important to my client, it is having a significant effect.

MRS JUSTICE STACEY: I know you do not accept that and that is why I am giving you the opportunity to help me better understand your arguments as to why you say this falls into the category of “significant”.

G

MR VANDERMAN: My Lady, I am happy to go to Miss Johnson’s statement and to the Macphail statement, that is where it is set out.

MRS JUSTICE STACEY: So you are just saying that -- There is no case law you can point me to to help understand the meaning of “significant” in this context.

H

MR VANDERMAN: The judges in each case take it on a case by case basis on the facts in the case and decide whether -- But significant harm is not the test. I am just saying -- My submission is ----

MRS JUSTICE STACEY: No, no, but it is one of the factors I have got to consider, is it not?

MR VANDERMAN: The amount of harm is a factor.

MRS JUSTICE STACEY: Yes.

A

MR VANDERMAN: But it is no part of the test that we have to prove a significant amount of harm.

MRS JUSTICE STACEY: No.

B

MR VANDERMAN: In my submission, if no. 2 was crossed out we would still be entitled to an injunction and the Article 10 and 11 balancing act would still be in our favour, because we are entitled to use our lands and on the dates on which direct action is being carried out that is not being permitted by the defendants. So the harm, in my submission, is an added factor, but it is by no means necessary.

C

MRS JUSTICE STACEY: Keep going.

MR VANDERMAN: No. 3 is the duration of the direct action. At the time of the skeleton it was 17 days, it is now more than that over the course of more than eight weeks, so we say that is a long duration ----

D

MRS JUSTICE STACEY: Is it 20 days now? Is it three days more?

MR VANDERMAN: Yes. So this is not a case of -- On 11<sup>th</sup> April there was that meeting on private land and on the highway, a one off meeting. This is not just a one off incident. This is happening regularly over a number of weeks.

E

MRS JUSTICE STACEY: Yes, okay, I have got the point.

MR VANDERMAN: No. 4 is the fact that the defendants are able to protest, make their views known at other locations and through other methods without causing this harm and without trespass, without causing private nuisance. You can see that from the photos where they are on the wrong side of the road. It is a very physical or very easy method of doing that, carrying out direct action.

F

MRS JUSTICE STACEY: Then you have got the Tellwrecker(?) offence.

G

MR VANDERMAN: Yes, at 5 two offences we have set out. The 1992 Act and the 1980 Highways Act which we say (inaudible) is this. For both of those provisions, I do not know if my Lady wants to go to them, but for both of those provisions there is a without lawful authority or without reasonable excuse provision.

H

MRS JUSTICE STACEY: No, no, I have read them, yes.

MR VANDERMAN: Then no. 6 over the page at 15 there are no less restrictive or intrusive alternative measures and I quoted the *North Warwickshire* case, my Lady. It might be helpful to go to that. That is at tab 12, page 271. You will see at paragraph 1 what this is about. This is another one of the protest injunctions brought by a local authority. If you go to page 281, paragraph 46. You see there the argument from one of the

A defendants that no injunction is required because wider powers now exist under criminal  
law to provide deterrents, as well as making it easy for the police to act, so basically  
relying on the criminal justice system and the police. Then if you go to page 293, at page  
B 293 you see the Human Rights matters begin and if you go to paragraph 79 that is just  
setting up the four questions that we have already been through as a starter for HRA  
analysis. At paragraph 81 you can see what activities the council were seeking to  
prevent, so on private land and also blocking entrances. 82 says it is necessary to  
consider whether there are less restrictive alternatives to achieve the same objective and  
C the defendants' submissions were that it was unnecessary in the light of the expanded  
criminal law powers. You then see the alternatives, a list at 83. 84 talks about public  
space protection orders. That is granted by local authorities. It only deals with public  
space, not private spaces. At paragraph 85 they refer to bylaws which obviously the  
D claimants cannot do. Paragraph 86 then talks about the criminal justice system or at least  
talks about the offences and if I could leave my Lady to read paragraphs 87 to 88 which  
are the analysis of the court.

MRS JUSTICE STACEY: Yes, I am familiar with this.

MR VANDERMAN: Those are the parts of that I rely on.

E MRS JUSTICE STACEY: Yes.

MR VANDERMAN: Then you may remember, my Lady, I was going to take you to but I  
adverted to it when we were in Johnson1. Paragraph 88 is her paragraph saying ----

MRS JUSTICE STACEY: Yes, about what the police were saying, yes.

F MR VANDERMAN: It says, "We cannot rely on the police response". Also Mr Macphail's  
statement that refers to the police themselves encouraging (inaudible) an injunction.

MRS JUSTICE STACEY: Yes.

G MR VANDERMAN: So then (7), this is the bottom of page 15 -- My Lady, I have just seen  
the time it is 1.01.

MRS JUSTICE STACEY: Yes, gosh, so it is. How much longer have you got?

MR VANDERMAN: In terms of the (inaudible) factors, the last ones are quite quick, so in  
terms of those submissions ----

H MRS JUSTICE STACEY: Shall we come back at two o'clock or shall I say 2.15?

MR VANDERMAN: I think we are content with two o'clock.

MRS JUSTICE STACEY: Two o'clock.

A

MR VANDERMAN: My Lady, can I just make one point. I think it is the intention or the proposal from my solicitors to come up with a further witness statement dealing with some of the issues that were raised earlier. I do not know if the court would find that of assistance.

B

MRS JUSTICE STACEY: By two o'clock?

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: In that case, I will need time to read things.

MR VANDERMAN: Yes.

C

MRS JUSTICE STACEY: So how much material are you planning to put before me?

MR VANDERMAN: Can I just turn my back for a second? (Pause) My Lady, the witness statement is around four pages and then there are the exhibits which are the ballot notification and that kind of thing are about 28 pages. I doubt you will need to read all of those, but they would be there.

D

MRS JUSTICE STACEY: I will need a bit of time, so if you are able to get that to me by two o'clock, perhaps if I can have 15 minutes.

MR VANDERMAN: Of course.

E

MRS JUSTICE STACEY: If you get it to me after two o'clock 15 minutes after then. I do not want to put you under too much pressure. It is very impressive to be able to cobble that together in such a short space of time. So shall we reconvene 15 minutes after I have had the information, but not before 2.15 because I have got to have some lunch as well.

F

MR VANDERMAN: My Lady, yes, of course.

MRS JUSTICE STACEY: Good. Thank you very much indeed. That will be very helpful to have that information and you have had enough of a steer of what I am looking for.

G

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Good. Thank you.

(Luncheon adjournment)

H

MRS JUSTICE STACEY: Thank you. You have had a busy lunch hour. Thanks very much indeed. I have had a chance to look at the statement and the documents, I am extremely grateful for that. I cannot remember where you got to.

MR VANDERMAN: I do not know if it would be helpful to go through it in fact, my Lady, or whether you ----

A

MRS JUSTICE STACEY: Let me see. There were just a couple of things. It is such a minor detail, but just proving I have read it really. There is a slight discrepancy I think in the numbers at paragraph 12 of Mr Allen's statement. Was there one spoilt vote? Just so that I am clear, in the last sentence it should be 47, not 59, I think, should it not?

B

MR VANDERMAN: The last sentence of?

MRS JUSTICE STACEY: Of paragraph 12.

MR VANDERMAN: "Of the 59 votes passed 45 voted yes".

MRS JUSTICE STACEY: It says of the 59 votes passed, but it is 47, I think, is it not, because you have got the balloting constituency is 59?

C

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: The previous sentence says that 47 people voted and then the next sentence says of the 59 votes, but I think that must mean 47, must it not?

D

MR VANDERMAN: Yes, my Lady, that is correct. Of the 47 votes cast 45 ----

MRS JUSTICE STACEY: So there is one remaining vote which was, what, a spoilt vote?

MR VANDERMAN: Spoilt, yes.

MRS JUSTICE STACEY: Okay.

E

MR VANDERMAN: You can see that in the table.

MRS JUSTICE STACEY: Yes, I assumed that was right.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Unite's solicitors, the letter from Unite's solicitors that said that they confirm -- They have not said about being notified.

F

MR VANDERMAN: It is page 26 of the exhibits.

MRS JUSTICE STACEY: And they have not answered.

MR VANDERMAN: Our email is the bottom of 26.

MRS JUSTICE STACEY: Okay. Anything by email?

G

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: That is useful to know.

MR VANDERMAN: That is why in the amended drafted order we have added an email address.

H

MRS JUSTICE STACEY: That is right, but if they want to receive things by email then they should not have to go via the website, should they? So you had better amend the draft so that the solicitors ----

MR VANDERMAN: I understand.

A

MRS JUSTICE STACEY: Are they happy for -- They have not objected to their client being informed directly in addition?

MR VANDERMAN: No.

MRS JUSTICE STACEY: No, because there are rules, are there not, about contacting clients direct if people are acting?

B

MR VANDERMAN: At the point of notifying those individuals on the claim form or the application notice they did not have solicitors on record.

MRS JUSTICE STACEY: No and they will continue not to be on the record, but your solicitors will know better than me what the rules are.

C

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Although it seems to me sensible to include telling Unite direct, but you might want just to check that Unite's solicitors do not think there is anything improper about that.

D

MR VANDERMAN: I imagine if they had considered it a problem they would have raised it by now, but we will double check just to confirm.

MRS JUSTICE STACEY: Yes. I do not suppose they think there will be any of the sort of issues that might arise, but you want to double check that.

E

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Well done, you have spotted that the heading needs to change.

MR VANDERMAN: Yes, my Lady, and the knock on effect of that I think is that we need to file an amended claim form and particulars.

F

MRS JUSTICE STACEY: Right. Were they attached?

MR VANDERMAN: No, apologies, we have not had time to do that.

MRS JUSTICE STACEY: Please do not take it as criticism. You have worked like trojans, all of you, but you can tell me orally what the changes ---- It was simply to the heading?

G

MR VANDERMAN: It will just be the heading.

MRS JUSTICE STACEY: Okay, excellent.

H

MR VANDERMAN: I do not think we need to change anything substantively in the particulars because ultimately if the court were to grant that relief it would just be a different form of relief that was granted, but in terms of the names of the defendants, that probably does need to change in the claim form.

MRS JUSTICE STACEY: Yes, I think it does. Given that I have not seen it and just to make sure in paragraph 13 to say which amends the identity, the naming or identity, I do not

A know what the best form of words is of the defendants but makes no substantive changes.

MR VANDERMAN: Yes, that ----

B MRS JUSTICE STACEY: Because otherwise I do not want to agree to something I have not seen in case it turns out to be completely different. So thank you for that. I am content --  
C Let me tell you, I am going to grant the order and there will not now be time for an *ex tempore* judgment. This has taken much longer than we all thought and I appreciate that is because I have done so much speaking partly, so apologies for that, but I will do the written reasons just as soon as possible. With the amendments that you have sensibly agreed and in particular the time frame, it is seven months, is it not?

MR VANDERMAN: Six months.

D MRS JUSTICE STACEY: Six months. Is it six months? So it is. I think that is appropriate and I think it is appropriate because we can see that the level of support of trade union membership is dwindling and so the prospect of three years is wholly unrealistic to think that an injunction will be necessary for this dispute.

MR VANDERMAN: I understand.

E MRS JUSTICE STACEY: I am sorry I have been rather brutal in focusing minds on the underlying dispute which has caused the protest, but I think that is a useful place to start and I am content with the “block or obstruct and exiting or entering”. There is one other thing we should look at which is a lot of eyebrows were raised as to why it was thought  
F appropriate to issue this case in the Business and Property Court in Leeds and it was understand that it was in order to try and obtain a speedy hearing.

G MR VANDERMAN: My Lady, there are two parts to that. The reason for Leeds, despite virtually everyone in this room not being from Sheffield or Leeds, it is because they thought it was fairer on the defendants to have the chance to come to their local court and make submissions if necessary.

MRS JUSTICE STACEY: But Sheffield is their local court, not Leeds.

H MR VANDERMAN: There is not a District Registry -- My understanding was that there was not a High Court District Registry in Sheffield.

MRS JUSTICE STACEY: I think there is. What does it say in the **White Book**?

MR VANDERMAN: My understanding is that it is just Leeds that sometimes sits here.

MRS JUSTICE STACEY: Are you sure about that?

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MR VANDERMAN: I now feel like I am in some doubt, but that was my understanding before this conversation, before this discussion.

MRS JUSTICE STACEY: Yes, we have got a Sheffield District Registry. That should have been checked. Two things. One is it should have been issued in Sheffield and no. 2 it is not a Business and Property Court case.

MR VANDERMAN: To the second point, the reason for that is that many of these cases are often in the Chancery Division because it is a Property Court case which ultimately involves disputes about land, so that is why that was done.

MRS JUSTICE STACEY: You point to me any one of the authorities at first instance that you have put in the authorities bundle that was in the Chancery Division. That can be rhetorical question, but you will find there are not very many.

MR VANDERMAN: We sent a letter to the court explaining why we had done that and for also recent cases which had been issued and judgment delivered in the Chancery Division, so this is not completely off the chart.

MRS JUSTICE STACEY: Anyway ----

MR VANDERMAN: I understand the point you are making, my Lady.

MRS JUSTICE STACEY: -- that was before I got involved.

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Have you checked whether there is a District Registry in Sheffield? I am sure there is. I know that my clerk knows there is, but I am giving you the chance just in case.

MR VANDERMAN: I am grateful.

MRS JUSTICE STACEY: It surely ought to be transferred to Sheffield.

MR VANDERMAN: If that is the case, my Lady, but I would like to just double check that and if that is the case then we would have no issue with that. (Pause) My Lady, referring to the King's Bench Division Guide, this is the 2025 version which I think is quite new, you will see ----

MRS JUSTICE STACEY: I seem not to be on the internet any more.

MR VANDERMAN: I can read it out, if you like.

MRS JUSTICE STACEY: Yes.

MR VANDERMAN: KBD Guide 2025, paragraph 3.1. This is about the court file.

A

MRS JUSTICE STACEY: No, Sheffield District Registry of the High Court. There is a District Registry, is there not? The court staff will know if anyone does. Yes, there is a Sheffield District Registry, but you do not have a Business and Property Court.

FEMALE SPEAKER: No.

B

MR VANDERMAN: That may be the reason. There was no intention to not be in Sheffield. The intention was to be as close to Sheffield as possible and we had understood that to be Leeds.

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MRS JUSTICE STACEY: Anyway, I will stop scoring points which I am not meaning to do, but just to say we need to put an amendment to the order to say that the case is transferred to the Sheffield District Registry.

MR VANDERMAN: Yes.

D

MRS JUSTICE STACEY: And that can go in -- There were some further directions, were there not?

MR VANDERMAN: Yes.

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MRS JUSTICE STACEY: You can decide where best to put it. Do you think everything is in there that should be?

MR VANDERMAN: I hope so, my Lady. I think so. You see I have added permission to adduce the first and second witness statements of Mr Allen as well.

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MRS JUSTICE STACEY: Yes, I have read those. I have accepted them and obviously some of that information could not have been -- Have you uploaded them to the website as well?

MR VANDERMAN: Can I just double check? (Pause) Not yet, my Lady, no.

MRS JUSTICE STACEY: But you will do. Do you want to undertake to do that by close of business today?

G

MR VANDERMAN: Yes. I can put that under Schedule 2.

MRS JUSTICE STACEY: Is it in Schedule 2 or is it in your -- Yes, that is Schedule 2, your undertakings. Help me, why have you disaggregated sites A to C and D to E in Schedule 2?

H

MR VANDERMAN: Because the first claimant has relevant interest in sites A to C.

MRS JUSTICE STACEY: Okay, because it is different claimants, all right, thank you.

Good. Should we add a clause about -- I will do the reasons to follow as soon as I can, but realistically I do not know quite how soon that will be. Do we need to ----

MR VANDERMAN: I do not think we need -- Just to follow.

A MRS JUSTICE STACEY: To follow.

MR VANDERMAN: I was part way through my submissions ----

MRS JUSTICE STACEY: You had pretty much got to the end, had you not?

B MR VANDERMAN: I just want to make sure that you -- particularly in terms of the -- We had got to Part 7 of the *Valero* test. Of course your Ladyship has read the skeleton and so taken a view on those points. In terms of the full and frank disclosure ----

C MRS JUSTICE STACEY: We discussed that as we were going along, did we not, and I think now that we have had Mr Allen's second statement I am satisfied. I am not suggesting there was not full and frank disclosure in the sense of any dereliction of duty, but just it would have been helpful, given the trade dispute background.

MR VANDERMAN: I am grateful.

D MRS JUSTICE STACEY: It has been tremendously helpful in understanding the time period that is the minimum necessary for the length of the injunction. I wondered about a three month review, but I think it probably is not ----

E MR VANDERMAN: I think revision at six months probably. In terms of the court's resources a three month review, in my submission, is probably unnecessary. Obviously if something fundamental changes within six months then we are under an obligation to update the court and possibly come back.

MRS JUSTICE STACEY: Yes and you have acknowledged that in the draft order, have you, or ----

F MR VANDERMAN: I think it is in my skeleton.

MRS JUSTICE STACEY: It is in your skeleton but I do not think you have ----

MR VANDERMAN: Because that is the obligation in the case law.

MRS JUSTICE STACEY: Yes and you do not want to put that as a separate undertaking and you have included the entitlement to ----

G MR VANDERMAN: Yes, that is (inaudible) paragraph.

H MRS JUSTICE STACEY: Yes. Good. Thank you very much indeed. The reasons will follow. I had probably better sign off the final -- Do you want to do the final order -- incorporate the amendments so far which I have agreed and then just put as new tracked changes the matters that we have discussed in court this afternoon; in other words, that is making sure that the solicitors do not have to go to the website.

MR VANDERMAN: I think you are envisaging two versions, one with tracked changes, one without tracked changes, one clean copy.

A MRS JUSTICE STACEY: Yes, yes, okay. Yes, why don't we do that.  
MR VANDERMAN: In terms of a sealed copy just with a clean version.  
MRS JUSTICE STACEY: Yes, but because we have ----  
MR VANDERMAN: You want to see the changes, yes, of course.  
B MRS JUSTICE STACEY: I want to see the changes that we have discussed this afternoon  
before I sign it off.  
MR VANDERMAN: Yes and the idea is that we will also at that time send the amended  
claim form.  
MRS JUSTICE STACEY: Yes, okay, that is fine.  
C MR VANDERMAN: Why don't we do that to follow?  
MRS JUSTICE STACEY: You can do that to follow, because we have identified what the  
changes are going to be in the body of the order.  
MR VANDERMAN: Yes.  
D MRS JUSTICE STACEY: Then as soon as I receive that I will look at it straight away.  
MR VANDERMAN: I am very grateful.  
MRS JUSTICE STACEY: Unless I think of anything else you will just get an email saying it  
is approved.  
E MR VANDERMAN: I am grateful.  
MRS JUSTICE STACEY: You are going to take steps to serve it this afternoon?  
MR VANDERMAN: As soon as we have the sealed order we will start to take the steps. In  
F terms of producing the A2 warning notice, I think that is the step that may take the  
longest.  
MRS JUSTICE STACEY: Yes.  
MR VANDERMAN: But we will just do it as soon as we reasonably practically can.  
MRS JUSTICE STACEY: Yes and you can email the Unite addresses as soon as possible  
G this afternoon.  
MR VANDERMAN: Yes, of course.  
MRS JUSTICE STACEY: Is there anything else?  
MR VANDERMAN: One moment. (Pause) My Lady, I am just being told that we have had  
H confirmation from the solicitors saying to send documents to them rather than to the five  
Unite email addresses.  
MRS JUSTICE STACEY: Right.

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MR VANDERMAN: So maybe we will take out Schedule 3 entirely and just put in Thompsons' email address in the body of the order.

MRS JUSTICE STACEY: Yes and maybe you can say "on their instructions".

MR VANDERMAN: As a recital?

MRS JUSTICE STACEY: I do not mind where it goes, but I think it is worth acknowledging that they have asked you not to send it to their client, that they will -- It is not really accepting service, it is accept notification.

MR VANDERMAN: Be notified or something.

MRS JUSTICE STACEY: Yes. Good. Anything we have overlooked or forgotten?

MR VANDERMAN: Can I just turn my back a moment?

MRS JUSTICE STACEY: Please. (Pause)

MR VANDERMAN: I am sorry, I have read the email. The confirmation from Mr Todd is specifically about the order and so does not specifically -- Although the question has been asked of him he does not specifically answer the question of are the documents in the claim to be received just by him or by Unite individuals, so as things stand we do not have that confirmation from ----

MRS JUSTICE STACEY: You should carry on uploading Mr Allen's witness statement to the website.

MR VANDERMAN: Oh yes, of course we will do that. The question is what email addresses to include.

MRS JUSTICE STACEY: I am looking at your paragraph 9: "The order shall be notified to the persons unknown by" -- If Unite had said, "Send it to our solicitors" that is good service.

MR VANDERMAN: The order I think he says to him and just for the order to one individual.

MRS JUSTICE STACEY: At Unite?

MR VANDERMAN: At Unite, so we can do that, but in terms of future documents, which is paragraph 10 and 11 we have not received confirmation in terms.

MRS JUSTICE STACEY: It is a bit fiddly then, is it not? Do you want to double check if he has just overlooked that.

MR VANDERMAN: I think we have, I think we are in the process of doing that and probably do not have an answer.

MRS JUSTICE STACEY: It may just be an oversight.

A

MR VANDERMAN: It may be that when I send you the email with the completed draft we will know the answer by then.

MRS JUSTICE STACEY: Yes, exactly. If you do not then I suppose what you could say -- If he does not answer it you had better carry on doing the Unite people and him and you can say, "Unless otherwise directed by Thompsons" so that you are covered as well.

B

MR VANDERMAN: Yes.

MRS JUSTICE STACEY: Well spotted. Anything else?

MR VANDERMAN: I think that is it, my Lady. Can I, again, repeat our gratitude that this hearing was listed so quickly and away from where you are usually based.

C

MRS JUSTICE STACEY: Thank you for all your patience, because I had very many questions and interruptions, but I think we got there in the end, did we not? Good.

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**Marten Walsh Cherer hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.**

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