

Mr Colin Joseph, Senior Partner,  
DJ Freeman Solicitors  
43 Fetter Lane, London

Alfred Donovan  
St Andrews Castle  
Bury St Edmunds IP33 3PH

19<sup>th</sup> October 1998 (cc. All Shell and DJ Freeman staff)

**Dear Mr Joseph**

**Re: Your Client - Shell UK Limited**

I acknowledge receipt of your firm's letter dated 9 October 1998. Bearing all of the relevant facts in mind, I have never encountered such breathtaking hypocrisy. I will deal in this open letter with the points your firm has raised.

Firstly, you object to the letters being circulated at Shell-Mex House and the Shell Centre and also to the allegations made against Shell and Mr Lazenby. Your client threatens to "draw these matters to the attention of the Court" and "seek all available remedies". I would have thought that by now, Shell and its lawyers would have given up bombarding my family and I with threats. It is a waste of time and of shareholders money. A comprehensive list of the threats is published, in date order, on an Internet website ([www.don-marketing.com](http://www.don-marketing.com)).

Shell has not sued me for libel because it knows that I have the evidence to substantiate my allegations. With regard to Mr Lazenby, anyone who wishes to make their own assessment of his scruples has only to visit the DM website and listen to extracts from the recorded telephone conversations between him and a DM Director, my son, John Donovan. It is not just what Mr Lazenby says, it is also the way that he says it. Why Shell is attempting to defend him in relation to the SMART claim when it has already settled three DM legal actions arising from his misdeeds, for which its senior management has apologised verbally, and in writing, absolutely beggars belief, both from a legal and moral standpoint.

Want me to stop circulating letters, all your client has to do is stop using unprincipled tactics against a financially weaker opponent. Shell had no need to bring a futile and vindictive £100,000 Counterclaim against an 81-year-old war pensioner. Your undercover agents must have reported that even in the miraculous event that your counterclaim succeeds, Shell will not receive a penny from me in compensation or costs, because I have no assets. In this regard, I would remind Shell of what it said in a press statement issued on 17 March 1995, about the previous litigation: "*Shell would be in breach of its obligations to shareholders if it initiated legal actions, failed to defend itself, or participated in actions in which it would lose money even if successful*". That is precisely the situation that currently applies. Thus, by its own words, Shell is in breach of its obligations to shareholders.

You say the issues would best be determined by the Courts. If that is truly the case, why is Shell a member of the Centre of Dispute Resolution and why has it ignored all proposals for binding ADR? The answer is simple. Because litigation is horrendously expensive Shell enjoys a huge advantage by insisting on a Court determination. My son can only afford to sue Shell by making huge sacrifices, including selling his home. At the age of 81, my wife and I have already been forced to sell ours to defend the Counterclaim. The only logical reason for Shell's tactics is that it hopes that if the case drags on long enough, my sons financial resources will be exhausted and the action will never come before the Courts.

Cont'd/...

If your client really were the highly principled multi-national that it pretends to be, it would offer, as part of its code of practice, a free arbitration option to settle disputes. British Telecom does exactly that, presumably so that it cannot be accused of exploiting its massive financial advantage against a weaker opponent, in the way that Shell is so ruthlessly doing.

Your letter also deals with alleged breaches of the "funding deed". I would remind you that after DM received a letter from your firm warning them not to issue a press statement commenting on the previous litigation (a warning that DM heeded), Shell gave a Press Statement to a national newspaper (and other publications) commenting on that very subject. Their action was by your own interpretation, directly in breach of the terms of the funding deed, which were equally binding on Shell.

DM also received letters from the Company Secretary of Shell Transport and from your firm, issuing warnings that DM must not disclose information about the funding deed. Again, DM heeded the warnings. However, your firm subsequently supplied extracts from the funding deed to a national newspaper. When this act was exposed, DJ Freeman decided to be economical with the truth and stated in a letter dated 14 September 1998 that the relevant journalist had merely been shown a copy. In fact, one of your associates, Jane MacCarthy, had supplied the newspaper with a document containing extracts from the funding deed.

Your own actions in relation to the activities of an undercover investigator engaged by your firm has led to a complaint being lodged against you with The Office for the Supervision of Solicitors. Your undercover operative gave a false alibi for his visit to DM's offices and in so doing, acted under false pretences on behalf of your firm and your client, Shell UK Limited. Despite the sinister nature of the events that took place, you remained silent about your association with the undercover investigator and only admitted the truth after action taken by DM's Solicitors forced you to come clean.

You also ignored DM's request to disclose the extent of the brief given to the investigators, including whether certain illegal activity mentioned in the DM letter had been undertaken. Instead of apologising, you had the effrontery to send a letter to my son making it clear that other individuals had been involved in making enquiries about us. Clearly a statement that was designed to intimidate. I am surprised that a prestigious firm such as DJ Freeman would allow itself and its client to be associated with such sleazy undercover activity. It is even more unexpected, when the Senior Partner at DJ Freeman, who is presumably supposed to be a good example, is directly connected with such outright deceit and trickery.

I should have been forewarned by your cavalier rejection of the SMART claim as being "inevitably doomed to failure", even though you had not even bothered to obtain Counsels advice. DM's Solicitors took a much more professional approach. Leading Counsel, Dr Mary Vitoria QC, was supplied with the evidence assembled by both parties - DM and Shell. She also studied two independent expert opinions, one of them authored by Professor Steve Worthington, who is probably the world's leading authority on loyalty card schemes. Dr Vitoria was also supplied with an extensive case study on the SMART scheme published by the FT. She concluded that DM has a strongly arguable case with good prospects of success.

Make no mistake, I will certainly bring the conduct of your client and your firm to the attention of the High Court and to the court of public opinion. Many people would conclude that the actions of your firm on behalf of Shell cannot possibly be reconciled with the core principles in the Statement of General Business Principles published by the Royal Dutch/Shell Group, pledging honesty, integrity, and openness, in all of its dealings. That pledge must include dealing on an equitable and ethical basis with legitimate claims brought against Shell.

Yours sincerely

425

Alfred Donovan, Retired Director of Don Marketing (Cell-phone 0411 526 769).