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editorial

Mark Molyneux
Associate, Addleshaw Goddard

Has the harassment act finally found its teeth in the battle against animal rights protestors?

The Protection from Harassment Act (PHA) was nicknamed the 'Stalker's Act' when it was introduced in 1997. It was heralded as the legal solution to stalking and to the harassment of individuals, including high-profile protests by animal rights activists against research organizations and their employees.

But the PHA has not been as effective at dealing with harassment by animal rights protesters as the research community expected. The act has received a lot of criticism. The police seem reticent to use it and the courts have taken a restrictive view as to how and when it can be applied.

However, a recent High Court case appears to fortify the protection afforded by the PHA to organizations facing harassment from animal rights activists or other groups of protesters.

Stipulations of the PHA

The overall aim of the PHA is to catch all types of harassment. As well as the policing of animal rights protestors, it can include neighbourhood disputes, racial hatred, bullying and domestic violence, industrial strikes or action by hunt supporters.

The act states that a person must not pursue a course of conduct that they know (or ought to know) amounts to the harassment of another. It is not necessary to prove that the person intended to harass someone. The test is whether a reasonable person who had the same information would think that it amounted to harassment.

Although, on first reading, the protection afforded by the act seems ample, there are strict stipulations on how and what kind of harassment must occur for court proceedings to succeed. Furthermore, the narrow interpretation of the act by the courts has meant that few animal rights-related actions under the PHA have been successful.

Historic approach of the courts

The accepted interpretation of the PHA is that civil proceedings for harassment can only be brought in the name of specific individuals, rather than the name of a corporate entity. This means that companies are prevented from bringing actions in their name or under the name of a particular group. Furthermore, a course of conduct generally has to be proven. That is, one named individual has to be shown to have harassed another named individual on more than one occasion.

The court's historically restrictive approach is reflected in two key earlier cases: (i) *Daiichi and others versus Stop Huntingdon animal cruelty and others* in 2003; and (ii) *Tuppen and others versus Microsoft* in 2000. The decisions in both these cases restricted

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the situations under which injunctions could be brought for harassment under the PHA. In *Daiichi*, the Court held that the term 'person' in the PHA did not refer to a corporate entity, therefore preventing a company from bringing proceedings in its own name. By contrast, *Tuppen* clarified – and restricted – what could be regarded as harassment under the Act. The legal reasoning behind this approach was that the size and financial power of large organizations, such as medical research companies or laboratories, was such that if the courts did not take a restrictive view, the Act could be quickly and easily abused.

Clearly, for a large pharmaceutical company, for example, naming specific individuals who have been the victims of harassment at the hands of animal rights groups could be undesirable, for confidentiality or safety reasons, as well as impractical.

Animal rights protesters, too, have not been slow to exploit perceived loopholes in the legislation, by, for example, not using the same individuals to harass the same targets. If they harassed one employee one day and another employee the next, it proved difficult to get an injunction. However, the recent case of *The Chancellor, Masters and Scholars of Oxford University and others versus Broughton and others* marks a significant change in the courts' approach and appears to have strengthened the position of those seeking injunctions against animal rights protesters.

The University of Oxford case

The claim at the centre of the case arose out of the construction of a new research laboratory at the University of Oxford. In July 2004, the main contractors and subcontractors working on the laboratory resigned from the project. They claimed that unacceptable levels of harassment from animal rights groups – including explicit threats, fake parcel bombs and sabotage – had made their positions untenable. Construction of the laboratory therefore stopped.

The university subsequently launched legal proceedings against the protesters. The contractors were refusing to continue with the construction of the laboratory without an injunction to prevent the activities of the animal rights groups.

The university sought an injunction to protect the whole of the University of Oxford, the employees and shareholders of its contractors, subcontractors and suppliers. Significantly, the injunction was for a large group of people who, although as a whole had suffered harassment, might not all have experienced problems individually.

Landmark decision

In a landmark decision, the High Court supported the injunction applied for by the University of Oxford. It found that, although not named individually, the protected persons were sufficiently easily identifiable, particularly by the defendants and so could be protected as a group. Moreover, because of the nature of the harassment being complained of and the relationship between the Defendant and Claimant there was no danger of accidental harassment.

The injunction affords protection from harassment by animal rights groups to an enormous number of people: anyone employed by the University of Oxford, from the Chancellor and Deans to lecturers and administrative staff; all students; employees and shareholders of any of the subcontractors on the project; and suppliers and their employees. It represents a marked change in the approach of the courts and it has particular significance for large corporate or research organizations, which might now be able to be granted an injunction in their company names or in the name of identifiable groups of people within the company or that are working on specific projects. It is the latest – and potentially most telling – development of case law surrounding the PHA.

The decision in the *University of Oxford* case follows a slightly different path from the two earlier cases of *Daiichi* and *Tuppen*. It appears to recognize – and address – the difficulties that these decisions had created for research organizations seeking protection against protesters, but that were unwilling or unable to expose named individuals in their organization to the legal process. By doing so, the decision arguably reasserts the PHA as a framework for valid legal redress for companies involved in research against harassment from animal rights groups.

However, the case is not necessarily the opening of the floodgates that some civil liberties groups argue it is. The judge was extremely careful to make it clear that the injunction was granted on the specific facts of the case, thus allowing a wide discretion for judges in future actions where the case is used to argue a precedent for other such injunctions being granted. In particular, there are two issues that will need to be addressed. The first relates to how many individuals must suffer harassment for a group to be granted an injunction. For example, if 50 call-centre operatives of a large research organization are harassed, then can an injunction be sought on behalf of the whole company? The *University of Oxford* case would suggest that the answer could be yes, but the court would have to examine the circumstances of the individual case to decide whether or not it was justified. This is one important check to the decision. The second concerns the nature of the harassment that is the subject of the complaint. In the *University of Oxford* case, a specific event or issue was raised as a complaint (i.e. the building of the research laboratory). The court allowed the injunction because it could draw a boundary around the event and people involved and thus it is relatively clear to those involved what can and cannot be done following the granting of the injunctions. These issues will have to be addressed and satisfied in future cases before similar injunctions can be granted.

Human rights concerns

The decision has attracted much commentary and criticism, particularly from civil rights organizations, on the basis that it is a major infringement to human rights and that too much power is being given to large organizations.

It is certainly a blow to animal rights groups, but, because of the factual discretion remaining (i.e. each case must be judged on its own merits), it is highly unlikely to open the floodgates to wide-ranging injunctions being granted to protect research organizations and corporate companies against groups of protesters. The courts overarching aim is still to balance the rights of researchers against the civil liberties of protesters. They are likely to restrict the approach taken in the *University of Oxford* case to a sufficiently serious situation (i.e. this approach will only be accepted for significant cases of harassment).

A company is unlikely to be granted a blanket injunction protecting it – and everyone associated with it – from a group of protesters. It will still have to link particular individuals to specific incidents of harassment.

Nonetheless, after the decisions in *Daiichi* and *Tuppen*, it marks another significant step in the development of the law surrounding harassment and is a potential boost to organizations looking to protect their employees, their research and their business from the illegal activities of animal rights activists.

Mark Molyneux
Addleshaw Goddard,
Sovereign House, Sovereign Street,
Leeds,
UK, LS1 1HQ
e-mail: mark.molyneux@addleshawgoddard.com

Erratum

In the 15th June 2005 issue of *Drug Discovery Today* (Vol.10, No. 12, p. 808), in the article entitled *Phage therapy: an attractive option for dealing with antibiotic-resistant bacterial infections* by Dr Alexander Sulakvelidze, we published an erroneous sentence 'Lytic bacteriophages (phages, for short) – that is, viruses that infect and kill bacteria – were discovered independently by Felix d'Herelle and Edward Twort in 1915 and 1917, respectively.' This should have read 'Lytic bacteriophages (phages, for short) – that is, viruses that infect and kill bacteria – were discovered independently by Frederick Twort and Felix d'Herelle in 1915 and 1917, respectively.' Additionally, the title became truncated, omitting the final word 'infections'. The journal's editorial and production team acknowledges entire responsibility for this error and apologizes to the author and reader for any confusion caused.

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