Westlaw UK Delivery Summary

Request made by:	IPUSERCP3395671551 IPUSERCP3395671551
Request made on:	Sunday, 25 November, 2007 at 08:21 GMT
Client ID:	bbk.bb144100ad240000
Title:	EDO MBM Technology Ltd v Campaign to Smash EDO
Delivery selection:	Current Document
Number of documents delivered:	1
Document(s) e-mailed to:	smashedo@hotmail.com

EDO MBM Technology Ltd v Campaign to Smash EDO & Others

Case No: HQ05X00791

High Court of Justice Queen's Bench Division

29 April 2005

[2005] EWHC 837 (QB)

2005 WL 3661971

Before : The Honourable Mr. Justice Gross

Date: 29/04/2005

Representation

- Mr. Tim Lawson-Cruttenden (of Lawson-Cruttenden & Co, London, WC1R) for the Claimant.
- Ms. Stephanie Harrison and Mr. Stephen Simblet for the 3rd, 4th, 8th, 10th, 11th, 14th and 15th Defendants.
- Mr. Alistair Mitchell for the 12th Defendant.
- Mr. Osmond, the 6th Defendant, appeared In Person.

Approved Judgment

Mr Justice Gross:

Introduction

1 There is before the Court an application by the Second Claimant ("Mr. Jones"), on his own behalf and on behalf of those whom he seeks to represent, seeking an interim injunction, restraining the named Defendants and others whom he seeks to bind, under The Protection from Harassment Act 1997 ("the Act"), pending trial or further order. At trial, it is the intention of Mr. Jones to claim permanent injunctive relief under the Act.

2 There are also before the Court applications by the 3rd, 4th, 8th, 10th, 11th, 12th, 14th and 15th Defendants to strike out the Claimants' claim, under CPR 3.4 (2)(a) and (b), on the grounds that there are no reasonable grounds for bringing the claim and/or that the claim is an abuse of process and is likely to obstruct the just disposal of these proceedings. Whether or not strictly warranted, I shall treat the 6th Defendant ("Mr. Osmond") as joining in the strike out application and I shall do the same for a Mr. Ceri Gibbons, of whom more later.

3 The rival applications substantially overlap. In a nutshell, the applications concern the drawing of a line between legitimate protest and the infringement of the rights of others. The context is that of "anti-war" protests, more specifically directed at the alleged illegality of the war in Iraq and, to some extent, the Israeli/Palestinian question. In the event, the streets and neighbourhoods of Brighton have come to serve as the stage for these protests.

4 The First Claimant ("EDO") is described as follows in the Particulars of Claim:

> "The First Claimant is a company which carries out its activities at Home Farm Business Part, Home Farm Road, Brighton …. The First Claimant is engaged in the design and manufacture of electro mechanical equipment for the defence and aero space industries. Products manufactured include weapon release and interface equipment, scanning motors for infra-red detection systems, rugged computer systems and flexible electrical circuits and cord-reel cables. Broadly the First Claimant can be described as a company primarily engaged in the 'defence industry'."

5 Mr. Jones is the Managing Director of EDO. It is said that EDO employs about 156 employees ("the employees"), 3 individuals on sub-contracts ("the sub-contractors") and, from time to time, security personnel from an outside agency ("the security personnel"). As foreshadowed, Mr. Jones seeks to bring the action and claim the interim relief on his own behalf and on behalf of the employees, sub-contractors and security personnel, pursuant to CPR 19.6, which provides as follows:

> "(1) Where more than one person has the same interest in a claim —
>
> (a) the claim may be begun; or
>
> (b) the court may order that the claim be continued,
>
> by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest."

6 Turning to the Defendants, the status and standing of the First and Second Defendants ("Smash EDO" and "BOOB" respectively) are very much in dispute. Those Defendants who have appeared before me allege that Smash EDO and BOOB do not exist. The Claimants allege that these are unincorporated associations.

7 The 3rd, 4th, 8th, 10th, 11th, 14th and 15th Defendants are individuals represented by Ms. Harrison and Mr. Simblet of counsel. The 12th Defendant is likewise represented by counsel, in his case, by Mr. Mitchell. Mr. Osmond (as will be recalled, the Sixth Defendant) represented himself, accompanied by a Mackenzie Friend. Mr. Gibbons, to whom I have already referred, applied to be joined as a Defendant, ultimately on the basis that his rights as a protestor would be affected by the grant of any injunction. At one point, it had appeared that Mr. Gibbons was seeking to represent Smash EDO but as the ramifications of any such move became apparent, he made it clear that such was not his intention.

8 As a matter of record, the 3rd to 8th Defendants were convicted in late 2004 or early 2005, of obstruction of the highway arising out of an incident on the 20th May, 2004 ("the 20th May incident"), to which I shall return. The 9th–13th Defendants were convicted in early 2005, of aggravated trespass, arising out of a separate facet of the 20th May incident. The 14th–16th Defendants were acquitted in February 2004 of aggravated trespass arising out of an incident on the 2nd September, 2004 ("the 2nd September incident").

9 Three Defendants have criminal records extending beyond these incidents. Thus the 12th Defendant has 6 previous convictions in respect of 16 offences; the 14th Defendant has 21 previous convictions in respect of 70 offences; the 15th Defendant has 23 convictions in respect of 68 offences.

10 The 6th and 13th Defendants have offered undertakings and, although there has been some discussion as to their precise terms, no more need be said of them.

11 The 7th , 9th and 16th Defendants did not appear and were not represented.

12 The interim injunction includes the following terms:

> "This Order shall be construed in accordance with the following Orders and/or Definitions:—
>
> - 2. In this Order harass has the same meaning as in the Protection from Harassment Act 1997 ….
> - 3. In this Order 'exclusion zone' or 'exclusion zones' shall mean any areas in which protesting activities are prohibited or curtailed by this Order or otherwise.
> - 4. In this Order Protestor or Protestors shall mean:
> - (a) the Defendants whether by themselves, their servants, agents or otherwise;
> - (b) any other person who is acting in concert with any of the named Defendants to do any act prohibited by this Order and who has notice of the terms of this Order whether by himself, his servants, agents, or otherwise; and

- (c) any other person who has been given notice of the terms of this Order whether by himself, his servants, agents, or otherwise, who does an act prohibited by this Order.
- 5. In this Order the Protected Persons shall mean:
- (a) The Second Claimant;
- (b) the Employees of First Claimant;
- (c) the sub-contractors of First Claimant
- (d) the security personnel engaged at the First Claimant's premises (‘the security personnel’);
- (e) the families, servants or agents of the First Claimant's employees, sub-contractors, and the security personnel;
- (f) any person seeking to visit the First Claimant's premises, or any premises or home belonging to or occupied by any of the aforesaid Protected Persons or any home or premises which is or are the subject of an exclusion zone or exclusion zones.

12 The Order

It is Ordered until … or further order THAT:—

(1) The Protestors be restrained from pursuing a course of conduct which amounts to harassment of the Protected Persons contrary to the Protection from Harassment Act 1997.

(2) AND in particular the Protestors be restrained, under the terms of the Protection from Harassment Act 1997, from:—

(a) assaulting, molesting, harassing, threatening, or otherwise interfering with the Protected Persons by doing acts which cause harassment, intimidation or harm to the Protected Persons by any means whatsoever including:—

(i) photographing the Protected Persons or their vehicles, which activities are prohibited in their entirety;

(ii) using any instruments whatsoever (whether or not designed for the purpose) in order to make artificial or musical noise, or using anything to amplify sound including loud hailers;

(b) making any abusive or threatening communication whether orally, by telephone, whether in writing, by facsimile, by electronic transfer (e-mail) or otherwise howsoever to the Protected Persons, save that the Protestors may communicate through their solicitors.

(c) entering into any premises belonging to any Protected Person.

(d) knowingly picketing, demonstrating or loitering within 100 yards of the houses of any of the Protected Persons (being exclusion zones);

(e) entering into, remaining or conducting any demonstrations or protests within the exclusion zone identified as the area coloured pink, yellow, orange and blue on the attached plan save that demonstrations may be conducted on the following terms namely:—

(i) the number of Protestors present at each such demonstration shall not exceed 10 individuals;

(ii) such demonstrations shall occur only once a week on Thursdays between the hours of 15.30 and 18.00;

(iii) the demonstrations shall only take place in the area coloured orange on the attached plan and marked ‘designated protest area’;

…

(v) the Protestors may enter the exclusion zone identified on the said attached Plan hereto for the sole purpose of gaining access to the said designated area;

(vi) the Protestors may only enter the area coloured blue for the purpose of passing and re-passing along the Lewes Road, Brighton and no demonstrations shall take place in the said area coloured blue.

(f) publishing, by website, e-mail or in any form whatsoever names, addresses, telephone numbers, fax numbers, electronic-mail addresses, car or other vehicle registration numbers or any other material, designed to make known to any Protestor or other person the identity of any of the Protected Persons.

(g) inciting or compelling any Protected Person against his will doing something which he is entitled or required to do.

(h) inciting or compelling any Protected Person against his will to do something which he is not under any obligation to do.

(i) creating, forming or establishing 'Protest Camps' within a radius of 3 miles of the First Claimant's premises, or any of the homes of the Protected Persons."

13 The Act (i.e., the Protection from Harassment Act 1997) provides as follows:

(1) A person must not pursue a course of conduct —

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows—

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

(1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(3) Where —

(a) in such proceedings the High Court … grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and

(b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(6) Where —

(a) the High Court … grants an injunction for the purpose mentioned in subsection (3)(a), and

(b) without reasonable excuse the defendant does anything which he is prohibited from

doing by the injunction,

he is guilty of an offence.

(9) A person guilty of an offence under subsection (6) is liable

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A 'course of conduct' must involve conduct on at least two occasions.

(4) 'Conduct' includes speech."

14 I turn to the rival cases. For the Claimants, Mr. Lawson-Cruttenden said that they had no intention of interfering with the Defendants' freedom of speech and assembly. Here, however, Mr. Jones and those he properly sought to represent (collectively, "C2") were entitled to protection from harassment, as provided for in the Act. The relief claimed was modelled on that obtained in the "Animal Rights" and "GM Foods" cases. There had been a concerted campaign, dating back to early 2004, against the Claimants, conducted by Smash EDO and/or BOOB, with the "mission statement" of removing EDO from Brighton, thereby depriving C2 of the right to work in Brighton ("the campaign"). It was appropriate to proceed against Smash EDO and BOOB. As to the individual Defendants (i.e., the 3rd to 16th Defendants, other than the 6th and 13th Defendants who have given undertakings), Mr. Lawson-Cruttenden's submissions proceeded as follows: (1) All these Defendants had either been convicted of obstruction or aggravated trespass or had trespassed on EDO's property; (2) these acts had been committed by these Defendants as part of a campaign; they had joined in the campaign; (3) the campaign had already involved a variety of acts amounting to harassment of C2; (4) unless restrained by injunction, there was the apprehension that these Defendants would commit further acts amounting to harassment of C2. That the individual Defendants had not yet committed the offence of harassment (requiring conduct on at least two occasions) was neither here nor there; the interim injunction was sought on the basis of apprehension (in effect a quia timet basis). The strength of the C2 case satisfied the relevant test for the grant of interim injunctions. No relief was sought on behalf of EDO, recognising that the law at present does not extend protection from harassment to companies. The Claimants had not delayed in bringing on this application; they had waited until the criminal proceedings had run their course; in any event, the campaign was continuing and has been said to be "snowballing".

15 For the Defendants they represented, the submissions of Ms. Harrison and Mr. Simblet, may be summarised as follows:

- i) EDO should be struck out from the proceedings; in any event, as a company, it was not entitled to relief under the Act.
- ii) Mr. Jones was not entitled to the representation order sought under CPR 19.6.
- iii) Neither Smash EDO nor BOOB could be sued. They were not unincorporated associations but even if they were, as they did not have legal personality, the proceedings should be struck out against them.
- iv) The interim injunction sought was draconian and unjustified. The context was public concern as to the legality of the war in Iraq. The ramifications of granting the order were serious and wide-ranging. The right of protest was in issue.
- v) The mischief at which the Act was aimed was the "stalking" of individuals. If used at all in the context of political protest, it should be used with the greatest care. Insofar as this legislation had been extended to deal with "animal rights" and "GM food" protestors, the rationale was that in those cases there had been a concerted campaign against individuals, akin to stalking.

- vi) The facts of those cases were significantly different from the facts of the present case. There was in those cases a concerted campaign, directed by a core group of individuals, with the avowed commitment to illegal means to intimidate and harass employees. Those cases did involve a campaign of terror equivalent to harassing individuals. The present was not such a case. It involved local protests conducted by disparate groups of individuals; there was no concerted campaign.

- vii) In the present case there was no proper basis for alleging the incitement or instigation of violence. Absent violence or the threat of violence, freedom of speech and assembly were not to be restricted. The Act was to be read consistently with The Human Rights Act 1998 and The European Convention on Human Rights ("the HRA" and "the Convention" respectively) and in accordance with the jurisprudence relating thereto. In particular, the Defendants' rights under Arts. 10 and 11 of the Convention were engaged.

- viii) The case against the Defendants in question rested and rested only on apprehended harassment. There was no case of actual harassment against those Defendants thus far. Nor could it be said that such acts of obstruction or aggravated trespass as had taken place were capable of constituting harassment. There was no basis for holding those Defendants responsible for the (alleged) acts of others in any EDO related incidents over the past year; that would simply amount to guilt by association. Even if there was a risk of the Defendants in question participating in future protests, there was no arguable risk of harassment from them. It was noteworthy that all the Defendants in question had observed their bail conditions. In any event, even if there was a risk of the Defendants engaging in acts which might otherwise constitute harassment, they had available to them the defences furnished by s.1(3) of the Act. In all the circumstances, the case against the Defendants who had been convicted did not satisfy the test for the grant of an interim injunction. *A fortiori*, there was no or no sufficient case against those Defendants who had been *acquitted* of aggravated trespass; it was an abuse to proceed against those Defendants.

- ix) There was no good reason for the grant of a civil injunction. There was nothing to suggest that the police were unable to control any protests using the available means of the criminal law, applied to actual (rather than apprehended) situations.

- x) In any event, the injunction in the terms sought was unnecessary and disproportionate; many of its terms were of unacceptable width; others were "gratuitous". Care was needed as to how it would apply, not only to those before the Court but to others who might be affected.

16 For the 12th Defendant, Mr. Mitchell adopted these submissions. He attacked the application on the ground of delay. He opposed the representation order sought by Mr. Jones. So far as concerned his client, nothing alleged against him amounted to a course of conduct constituting or capable of constituting harassment. Given the "reverse burden" imposed by s.1(3) of the Act, the 12th Defendant could not receive a fair trial. Mr. Mitchell explained certain references to the 12th Defendant in the documentation and denied that a statement attributed to him had been correctly attributed. The criminal law was sufficient to deal with the level of protest thus far.

17 Mr. Osmond emphasised the importance of his Convention Rights under Arts.10 and 11. He underlined the public interest and strength of feeling in respect of the controversy over the legality of the Iraqi war. The injunction was draconian and unnecessary and the matter could be left in the hands of the police and the criminal law. Mr. Osmond explained the various references made to him in the documentation and denied that he had described himself (as reported in one newspaper article) as the "organiser" of one particular protest. Great care was needed in attributing to any individuals certain items featured on the website, Indymedia UK; the reason is that the content of the Indymedia UK website is created through a system of open publishing; anyone can upload a report or picture directly to the site through an openly accessible web interface; similarly, anyone can post a comment on the website at the end of an article. The evidence against him and the other Defendants was tenuous and unsubstantiated. He had in any event available to him the defences furnished by s.1(3) of the Act.

18 Mr. Gibbons wished to be joined in the proceedings to protect his rights as a protestor. He was outraged by the legal action; the real issues concerned the war in Iraq. It was incredible and surreal that an injunction was being sought. If granted, it would criminalise lawful protest. In his written skeleton argument, he said this:

> "The acts which the Claimants seek to include in the injunction are either illegal, in which case the Claimants or Police could bring criminal proceedings against those participating, and an injunction is superfluous; or they are legal, in which case they fall to be protected as activities which people are entitled to take in furtherance of the right to Freedom of Expression (Article 10 ECHR) or Freedom of Assembly (Article 11 ECHR)."

19 Against this background, the principal issues for decision may conveniently be considered under the following headings:

- i) The position of EDO in the litigation;
- ii) Whether Mr. Jones is entitled to a representation order in respect of C2;
- iii) Whether the claim is properly brought against Smash EDO and BOOB;
- iv) The relevant test for an interim injunction;
- v) The legal framework;
- vi) The merits of the applications;
- vii) (Should it arise) The terms of any injunction.

I shall take these issues in turn. Before doing so, however, it is first necessary to summarise the factual history, as it appears from the evidence. In approaching this task I keep in mind throughout that the matter is at an interim stage and that much of the Claimants' evidence is disputed by the Defendants; nothing said by me is intended to preclude or inhibit challenge or argument at any trial.

The Factual History

20 The witness statement of Mr. Jones together with the material exhibited thereto provide a detailed history of the protests at or near EDO's premises or concerning EDO. That history includes the incidents set out in the paragraphs which follow.

21 The first planned demonstration, involving some 29 demonstrators, took place on the 19th March, 2004. Notwithstanding a substantial police presence, Mr. Jones (in his witness statement) describes it as a "verbally aggressive, noisy and intimidating protest". EDO employees were "very apprehensive".

22 Reference has already been made to the 20th May incident. As graphically depicted in Channel 4 video footage (an agreed extract of which was shown in court), a number of protestors blocked the road into the estate, in effect by the use of "D locks" to attach themselves to a metal cage. The road remained closed for some 5 hours, from about 07.00 until 12.00. By way of example, the video showed the 4th Defendant, a Mr. Levin, refusing a courteous offer from the police to release himself. Only after the police had brought in the resources necessary to cut Mr. Levin and others free from the cages, did (I was told) Mr. Levin make available to the officers the key to the lock facilitating his release. The incident involving the cage led, as already noted, to the conviction of the 3rd–8th Defendants on a charge of obstruction. Simultaneously with the obstruction of the road, the 9th–13th Defendants obtained access to the roof of the EDO premises. One demonstrator apparently injured his leg, thus requiring the resources of the fire brigade to be summoned to help him down (as shown in the video). The protestors did not finally leave the roof until about 20.00. In consequence of these events, EDO was closed for the day and its employees were prevented from working. The incident concerning the roof resulted in the conviction of the 9th–13th Defendants for aggravated trespass. I record, because Ms. Harrison was anxious that I should, that in the course of the events of the 20th May, the video shows an employee watching events from inside the EDO and eating a sandwich. Finally here and although the matter may be of no relevance to the grant or refusal of the injunction sought, I cannot help reflecting that the casual attitude on the part of those Defendants concerned to the wasteful use of the resources of the police and fire brigade (as I have described and as appears from the video), does them no credit whatever.

23 On occasions (it is unnecessary in this summary to record the dates), paint bombs in bottles

or light bulbs have been thrown at and smashed against the outside of the EDO building. Also on occasions, bricks or stones have been thrown at and through windows of the EDO premises, smashing them. In February 2005, a fence was cut and access gained to the rear of the EDO premises; criminal damage was caused to four air conditioning units. This last incident was reported with approval in Smash EDO Newsletter Issue #4, March 2005, of which more presently.

24 Other incidents have involved the placing of horse manure outside the EDO reception door during the night; an attempt to concrete the front reception doors; the insertion of superglue into the locks of all external doors during the night. Graffiti has been painted on Home Farm Road (the road on which the EDO building is sited) and on nearby walls and a footpath. Abuse has regularly been directed at EDO employees, including calling them "fucking murderers" and "killers". Noise has been a feature of at least some demonstrations, involving the use of pots, pans, drums and a loudhailer(s).

25 Between the 29th August and 3rd September, 2004 a so-called "peace camp" was organised. Though he insisted in court that he had been incorrectly quoted, a local newspaper said this on the 31st August in respect of Mr. Osmond:

> "Organiser Chris Osmond 24, said: 'We want to encourage as many people as possible to come and make noise here. We can make a difference — intense campaigning and direct action stopped Bayer from producing GM foods here.'"

The 2nd September incident (already referred to) involved the 14th–16th Defendants trespassing on the roof of the EDO building until assisted in their descent by the fire brigade; in fairness, again as already noted, they were acquitted on the charge of aggravated trespass.

26 There have been incidents where employees and their vehicles have been photographed and details of employee leaving times have been noted. On one occasion, a light has been shone into the eyes of an employee driving away from work. Demonstrators have worked in a coordinated fashion; those nearer the EDO premises passing on details to others so that the latter could target employees' cars at the junction between Home Farm Road and Lewes Road. The flavour of some of these incidents appears from the (anonymised) employee statements which have been before the Court. A female employee said this:

> "In December whilst I was driving home my car was approached at the bottom of Home Farm Road with banners held in front of my car, men approaching bending down to talk to me through the passenger window. I thought he was going to try to get in my car …. On another occasion because of the aggravation from the Protestors outside the building a policeman drove my car down to the bottom of the road where his colleague picked him up. On leaving the office I have been verbally abused many times."

Another employee spoke of distraction at a busy junction:

> "As I left the site, I noticed someone videoing, which I felt very uncomfortable and intimidated by. When I arrived down the bottom of the road, I had to stop to turn left. It was dark and the dual carriageway was busy so I could not pull out straight away. It is more difficult to judge distances and speeds at night with the headlights. I remember one of the protestors … [going] behind the back of my car … I got very nervous and thought he may have done something to the exhaust or tyres. I know I made a decision to pull out into a space which I normally would not have …."

The incident concerning the light was described in these terms:

> "I am usually not bothered by the albeit abusive and false accusations shouted or via loud hailer as I have exited from the building …
>
> But I have been bothered/concerned by two incidents:—
>
> • • Upon exiting the car park … the male protestor stepped forward in front of me/ my car and I had to take a slight deviation toward the centre of the road to avoid the possibility of any direct contact or confrontation ….
>
> • • On Thursday, 13th January 2005 at 16.40 … I exited the car park …. When I approached the bottom of the hill, some … protestors were gathered … One person,

> slightly away from the main group, appeared to have a theodolite apparatus and the single pole stand the 'instrument' was attached to looked, on brief sighting, a professional piece of surveying equipment … as I passed by … [that] … person …, I became aware of a red light emitting from the instrument …. Whilst I felt no visual ill effect from this read 'beam' of light, I was concerned that a laser beam was being directed to my face …."

27 Various activities have taken place in the vicinity of directors' homes.

- i) Leaflets were distributed in the neighbourhood in which Mr. Jones lives, headed "DANGER Mass Murderer at Large". Reference was then made to EDO supplying components to the armed forces of the United Kingdom and the United States of America and to the Iraqi war. The leaflets continued as follows:

> "David Jones is complicit in state orchestrated mass murder. Residents are advised to approach him with caution … EDO … Every death an opportunity."

- ii) On the 9th December, 2004, the 12th Defendant was arrested in connection with obtaining the home addresses of directors from Companies House. Indymedia reported this incident under the heading "Brighton Smash EDO activist arrested by special branch". The article continued in the following terms:

> "In a statement the activist stated that 'we must be willing to pay the highest prices and go all the way to stop death and destruction of innocent lives' …. Come and join the struggle lets shut the bastards down"

> Mr. Mitchell (as noted) denied that the statement was correctly attributed to the 12th Defendant; in any event, he submitted, it was a statement offering self sacrifice rather than any threat.

- iii) On or about the 29th January, 2005, leaflets were distributed in the neighbourhood where the EDO company secretary lives. It referred to him by name, alleged that he too was complicit in state orchestrated terrorism and mass murder; residents were advised to approach him with caution. On the 29th January, Indymedia contained the following account of this event:

> "On Thursday a group of activists visited the home of the company secretary of EDO … The company sec had a very nice house in a secluded part of Eastbourne. Residents of the quiet Eastbourne housing estate were given leaflets probclaiming that there was a 'MASS MURDERER AT LARGE' explaining … [his] … involvement in the production of release mechanisms for the Paveway 4 guided bomb …. Activists left the estate with a brief drumroll outside … [his] house- just to make sure he knew we'd been there."

> On the same day, a contributor (it cannot be determined whether this was the same person who wrote the account set out above) added this:

> "These tactics learnt from the Animal Rights movement do work wonders! …. The local neighbourhood of these perverts need, and have a right to know who they are living near … Why the hell should these f*cking b*stards live in peace???"

28 The grant of the injunction in the terms sought is supported by Chief Inspector Kerry Hove of the Brighton and Hove Police and District Commander for East Brighton, in essence, in the light of the matters recounted above. In her statement, she makes express reference to both the lawful right to protest and the need to protect the rights of the staff working at EDO.

29 In their witness statements, the 3rd, 4th, 8th, 10th, 11th, 12th, 14th and 15th Defendants all reserve the right to challenge at trial the evidential basis of the Claimants' claim. They all deny membership of Smash EDO or BOOB. They each speak of their own limited involvement in protests against EDO and deny any organisational role. They affirm compliance with their bail conditions. Some deny involvement in any protest activity after the lifting of their bail conditions. They each deny involvement in any incident of criminal damage or any intimidation or

harassment of EDO's employees. They record their opposition to what they describe as the illegal war in Iraq and, in some cases, to the use of EDO products by the Israeli army in Palestinian territories. They express concern at the curtailment of their civil liberties and other consequences which would flow from the injunction if granted. The Defendants also rely on a number of witness statements from others who support the protests and express their concerns at the implications of the injunction for them.

30 Finally, there is a statement from Mr. Daines, who describes himself as an active member of the Brighton Quaker Meeting; he speaks of his (and other Quakers') commitment to non-violent protests outside the EDO premises, in particular in the form of silent vigils; he speaks too of his anxiety as to the ramifications of the injunction. I shall return to the particular position of the Quakers at the end of the judgment; Mr. Lawson-Cruttenden made clear throughout that he was anxious to accommodate the concerns articulated by Mr. Daines.

31 It is convenient to pull the threads together for present purposes (underlining again that any conclusions are expressed only on an interim basis).

- i) First, on the available material the protests have included actions of criminal damage, trespass, regular abuse of employees, targeting of directors' homes or neighbourhoods, obstruction and dangerous activities on the roads in the vicinity of the EDO premises. That does not mean that every protestor has behaved in this fashion; doubtless, many have behaved peacefully and responsibly. But there is sufficient evidence of such activities so that they cannot be dismissed as unrepresentative of the protests in general.

- ii) Secondly, so far as concerns the 3rd–16th Defendants, it is fair to say that their actions to date have been confined (with the possible but immaterial exception of Mr. Osmond and the 12th Defendant) to one instance, involving either the 20th May or the 2nd September incident.

- iii) That said, thirdly, although the Defendants (or at least those whom Ms. Harrison represented) were anxious to distinguish the present protests from those concerning “animal rights” or “GM food”, no Defendant was prepared to repudiate such aspects of the protests as the offensive leafleting described above. When the matter was explored in argument, Ms. Harrison said, memorably, that while descriptions of individuals as “perverts” or “bastards” — as had happened in those other cases — could not be justified, on instructions she was unwilling to criticise the description of Mr. Jones and others as “mass murderers”; indeed, such activity is purportedly justified by reference to s.1(3) of the Act. When pressed further, Ms. Harrison's position was that these Defendants had no formal positive defence to such matters; they did not concern them. To my mind that stance is telling as to these Defendants' true attitude. Contrary, with respect, to Ms. Harrison's submissions, the inquiry is not as to any obligation on the part of these Defendants to disassociate themselves from the acts of others; nor still less is it a matter of these Defendants being responsible for the acts of others. It is instead a straightforward matter of assessing, realistically, the mindset of these Defendants with a view to evaluating risks as to their likely future conduct.

- iv) Fourthly and further as to the thinking of the individual Defendants before me (other than the 6th and 13th Defendants), all are self-appointed “activists”, who assert strong views on the complex topics which are said to motivate their protests. They appear to demand tolerance for their own activities but, on the evidence before me, that is not something they appear willing to extend to those holding different views — or simply wishing to get on with their own lives or work. These Defendants appear to claim a monopoly of morality and of right. There is at least the hint of arrogance in a good deal of the material published on the Indymedia website in support of the protests. An example is to be found in the description of the 20th May incident, which included the following:

> “A ‘cage’ was set up blocking the access road and banners were hung, one offering a potential corporate slogan: ‘Every Death an Opportunity’. Shortly afterwards, more activists ‘appeared’ on the roof of the factory, while others handed out *leaflets explaining what must have seemed an interesting intervention in the workers mundane trudge to work*.” (Italics added).

The implicit assumptions underlying these italicised words are revealing. There appears,

moreover, to be little regard for the costs and disruption caused to others, including the emergency services.

- v) Fifthly, the Indymedia web site has undoubtedly been used for publicity to fuel the protests but all Defendants deny responsibility in that regard. I turn to the principal issues.

The position of EDO

32 On the law as it currently stands, EDO, as a company cannot bring a claim under the Act; s.1 of the Act does not, on its proper construction embrace a corporate entity: Owen J, in Daiichi UK & Others v SHAC & Others [2003] EWHC/2337 (QB), Judgment 13th October, 2003, at [13]–[20].

33 Recognising this position, Mr. Lawson-Cruttenden did not seek relief under the Act on behalf of EDO. Although Mr. Simblet was initially minded to seek to have EDO struck out of the proceedings, he acknowledged that there might be advantages in EDO remaining a party to the proceedings both so that it should be bound by them and (perhaps) in terms of costs. In the circumstances, I propose to make no order in respect of EDO's continued participation in the proceedings — always on the basis that it is not seeking any relief in its own right.

Whether Mr. Jones is entitled to a representation order in respect of C2

34 Mr. Simblet resisted the making of any such order; there was insufficient evidence to support it — and none at all from any of the employees and others sought to be “represented” and thus bound. An order of this nature could have serious consequences. It should not be made on the available evidence. Mr. Mitchell also opposed the making of a representation order. Managing directors did not have the “same interest” as employees or sub-contractors.

35 In his witness statement, Mr. Jones said this:

> “I can tell the Court that I have expressly sought authority from the First Claimant's employees to represent them in these proceedings and to seek the injunctive relief and I am entirely satisfied that I have their formal authority to proceed with this application … I am satisfied that I have authority to represent the individuals on sub-contracts and the security personnel who will be engaged to work for the Claimants from time to time.”

36 For my part, I see no reason to doubt Mr. Jones's evidence in this regard. Should his claim to authority prove to be unwarranted, any aggrieved represented party is unlikely to be without a remedy. Although I sympathised to some extent with Mr. Simblet's complaint as to the absence of evidence directly from any party sought to be represented, I do not think that this objection is fatal to the application. So far as concerns the objection raised by Mr. Mitchell, in the context of the present matter I do not think it has substance; to my mind, Mr. Jones and all those within C2 have a demonstrably common interest in not being harassed by the Defendants (if the alleged apprehension of such harassment is established). Provided there is — as I think is the case — jurisdiction to make an order under CPR 19.6, considerations of justice and discretion point overwhelmingly to granting Mr. Jones the order sought in these proceedings. I do so accordingly.

Whether the claim is properly brought against Smash EDO and BOOB

37 Two questions arise under this heading. First, whether Smash EDO and/or BOOB have the characteristics of an unincorporated association? Secondly, even if the answer to that question is yes, whether an unincorporated association can be sued as such, without any representative parties being before the Court.

Smash EDO:

38 (1) I start with Smash EDO and its characteristics. The Defendants placed considerable reliance on a passage in the judgment of Stuart-Smith LJ in Monsanto v Tilly, TLR 30th November, 1999, Judgment 25th November, 1999, at para. 40 of the transcript:

> “Although it is not correct to say that there are members of GXS as such, the judge was right … to regard it as an unincorporated association. It is directed and managed by a co-ordinating group.; it has and publicises a postal address, telephone line, facsimile

> number and e-mail address; it has received [and presumably dealt with] over a thousand enquiries to its office.; it has a 'comprehensive' web site and a web site administrator; it has a bank account and seeks donations; it has published a 100 page handbook …; it publishes a newsletter; it has published a video film …; it has a Press/Media Liaison; it has held over 40 public meetings; it trains people to take direct action as part of its campaign; it has undertaken a number of direct actions …; it has branches or local groups …; it acts as a co-ordinating office for proposed uprooting action by its campaigners."

39 The Defendants submitted that Smash EDO was very different from the association discussed in Monsanto. To that there are two answers: (i) Monsanto, while containing most helpful guidance, is not to be read as a statute; (ii) Smash EDO has, in substance, much in common with that association.

40 On the evidence of the published material in Indymedia, the features of Smash EDO include the following:

- i) It has a telephone number and one or more e-mail addresses;
- ii) It conducts fund-raising;
- iii) It publishes a newsletter (to which reference has already been made in the context of approving remarks as to an incident of criminal damage);
- iv) It holds protests;
- v) It conducts legal workshops;
- vi) It holds itself out as a group of people campaigning with the purpose of removing EDO from Brighton and/or shutting it down through "raising awareness and direct action". In this regard, it is nothing to the point that it cooperates from time to time with other groups which share partly overlapping objectives (for instance, the Brighton and Hove Palestine Solidarity Campaign, in which Mr. Osmond appears to play or have played a leading role).

41 It is not necessary to approach such matters with blinkers. The ability of some who conduct "direct actions" or protests to use technology both to promote their causes and to draw a veil over the identities of those involved must be recognised (see, R (Laporte) v Chief Constable of Gloucestershire [2994] EWCA Civ 1639; [2005] 2 WLR 789); the law should not be naïve. Notwithstanding Mr. Simblet's valiant submissions, I am amply satisfied (at least for the purposes of the present applications) that there is an entity called Smash EDO and that, together with any predecessor organisations, it has been conducting a concerted campaign with a view to removing EDO from Brighton. Adopting with respect the phrase of Gibbs J in Huntingdon Life Sciences v SHAC & Others [2003] EWHC 1967 (Ob), at [27], it is a "sufficiently identifiable group" to be regarded as an unincorporated association. In my judgment, any other conclusion (at least at this stage of the case) is unreal.

42 What remains is the second question, namely whether Smash EDO can be sued as such, without any representative individuals being before the Court. Free from any previous authority, I would have little hesitation in answering this question "no". As a matter of principle, something which has no legal personality cannot be sued. Chitty on Contracts (29th ed., Vol. 1) puts the matter as follows, at para. 9–068:

> "An unincorporated association is not a legal person and therefore cannot sue or be sued unless such a course is authorised by express or implied statutory provisions as in the case of a trade union and a trustee savings bank."

No such statutory provisions are applicable here.

43 Mr. Lawson-Cruttenden, however, points to the fact that in Huntingdon and in a line of other first instance decisions thereafter, the Court has countenanced proceedings brought and continued against unincorporated associations in the animal rights and GM fields. Furthermore, in Huntingdon Life Sciences v Curtin, Court of Appeal, Judgment handed down on 15th October, 1997, a Court of two, on an *ex parte* hearing, likewise appeared to approve such a course. With

great respect, immensely attractive though it is to resolve problems of identification of individuals by way of joining unincorporated associations into legal proceedings, it is not possible to do so unless, at the least, there are before the Court individuals capable of being sued as representatives of the associations in question. If so, then all that would be lacking is the formality of a representation order. Again with respect, as it seems to me, in all the cases relied upon by Mr. Lawson-Cruttenden either such was the case or the point was not disputed. But here, there is no or no serious suggestion that any of the individual Defendants before the Court, or for that matter Mr. Gibbons, could be treated as representatives of Smash EDO — and the point has been taken.

44 In the circumstances, I am driven to strike out the proceedings against Smash EDO. However:

- i) That strike out is without prejudice to the Claimants having liberty to commence fresh proceedings against Smash EDO should they be in a position to identify individuals who, on an appropriate evidential basis, could be treated as its representatives. In that situation, the Court would readily incline towards using its powers under CPR 19.6 to do justice in the case: see, M. Michaels (Furriers) Ltd v Askew, Times Law Report, 25th June, 1983.

- ii) The problem of identification in the present case can in any event be addressed through the definition of "protestor" in the draft of the order sought, should C2 otherwise be entitled to relief. As Purchas LJ put it in M. Michaels (Furriers) (transcript):

> "It is common experience in recent times that if identifiable members of activist associations are restrained or removed by process of law, others of a like mind readily take their place to continue the aggression."

Certainly, one way or another, the law would not countenance an inability to afford effective relief, if once relief is justified.

BOOB:

45 (2) It follows that the proceedings against BOOB must likewise be struck out. In addition, in the case of BOOB, the evidence is wholly insufficient for me to conclude that it is an unincorporated association as opposed to a mere slogan.

The relevant test for an interim injunction

46 This issue can be taken shortly. Realistically, Mr. Lawson-Cruttenden accepted that the Claimants had to satisfy an "enhanced Cyanamid" test (see, American Cyanamid v Ethicon [1975] AC 396). He further accepted that, given the impact or possible impact of an injunction on the right to freedom of expression (see, s.12(3) of the HRA and Art. 10 of the Convention), in the light of Cream Holdings Ltd v Banerjee [2004] UKHL 44 [2005] 1 AC 253, an interim injunction should not be granted unless the court was satisfied that relief would probably (i.e, more likely than not) be granted at trial.

47 Ms. Harrison sought to go further. She submitted that as a person in breach of such an injunction would be exposed to criminal penalties (see, s. 3 (3), (6) and (9) of the Act), the standard of proof was the criminal standard. Ms. Harrison placed reliance on the observations of Lord Steyn, in connection with anti-social behaviour orders ("ASBOs"), in R (McCann) v Manchester Crown Ct [2002] UKHL 39 [2003] 1 AC 787, at [37].

48 In considering this submission, it is necessary to look closely at what Lord Steyn actually said. As a matter of pragmatism, the criminal standard was to be applied in determining whether the defendant had acted in an anti-social manner (a pre-condition under the relevant legislation for the grant of an ASBO). However, the next inquiry, as to whether an ASBO was necessary to protect persons from further anti-social acts by him, did not:

> "… involve a standard of proof; it is an exercise of judgment or evaluation."

49 In the circumstances, I am not persuaded that McCann assists the argument in the present case. There is no or no real dispute as to that which the individual Defendants before the Court have already done. The key issue goes instead to the apprehension or risk of future action. As it seems to me, that involves, in Lord Steyn's words, "an exercise of judgment or evaluation", not a

standard of proof. That said, given both the context in which the injunction is sought and the potential consequences of any breach, it is appropriate to proceed with proper caution.

50 For completeness, it should be mentioned that a refusal to grant C2 interim injunctive relief does not have the necessary consequence that the claim is to be struck out. For present purposes, the claim in these proceedings could only be struck out if it was hopeless or an abuse. Claims which are neither may be pursued perfectly properly but may not, for one reason or another, be supported by interim relief.

The legal framework

Freedom of expression and assembly:

51 (1) This is by now a well-travelled area but there can be no doubt that it forms the starting point for any consideration of the legal framework in the present case. Both at common law and now, under the HRA and the Convention, freedom of speech, or expression and freedom of assembly and association constitute rights jealously safeguarded by English law. It is important to have well in mind what this entails. In Redmond-Bate v DPP 7 BHRC 375, at pp. 382–3, Sedley LJ said this:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having. What Speakers' Corner (where the law applies as fully as anywhere else) demonstrates is the tolerance which is both extended by the law to opinion of every kind and expected by the law in the conduct of those who disagree, even strongly, with what they hear. From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas. A central purpose of the convention has been to set close limits to any such assumed power. We in this country continue to owe a debt to the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy …."

52 There is no or no serious dispute that the injunction sought in this case engages Arts. 10 and 11 of the Convention (to which reference has already been made). Those Articles provide as follows:

> ### Freedom of expression
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ….
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, shall be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
>
> ### Freedom of assembly and association
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others …
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others …."

53 No citation of authority is needed for the proposition that restrictions on these rights must be: (1) convincingly established; (2) justified by compelling reasons; (3) subject to careful scrutiny; (4) proportionate and no more than necessary. Indeed, even when so important a consideration as national security is involved, such concerns remain applicable; see, by way of recent example, the discussion on proportionality in A v Secretary of State for the Home Department [2004] UKHL 56; [2005] 2 WLR 87, at [30] and following.

54 There are, however, cases, as Arts. 10 and 11 themselves contemplate, where it is proper to impose restrictions on rights of expression and assembly.

55 In Burris v Azadani [1995] 1 WLR 1372, a pre-Act and HRA case, concerning threats of violence and harassment by the defendant at the plaintiff's house, the Court of Appeal emphasised the need to protect the interests of those who invoked its (i.e., the court's) jurisdiction (at p.1377). It was not a valid objection to the making of an exclusion zone order (as a term of the injunction) that the conduct to be restrained was not in itself tortious or otherwise unlawful (*ibid*); but such orders should not be made readily or without good reason (at p.1380). That said:

> "Respect for the freedom of the aggressor should never lead the court to deny necessary protection to the victim."

per Sir Thomas Bingham MR (as he then was), *ibid.*

56 In Monsanto v Tilly (*supra*), likewise a pre-HRA case, Stuart-Smith LJ said this:

> "In a democratic society the object of changing government policy had to be effected by lawful an dnot unlawful means. Those who suffered infringement of their lawful rights were entitled to the protection of the law.
>
> If others deliberately infringed those rights in order to attract publicity to their cause, however sincerely they believed in its correctness, they had to bear the consequences of their lawbreaking.
>
> That was fundamental to the rule of law in a civilised and democratic society."

57 Much more recently, Grigson J, in The University of Oxford & Others v Broughton & Others [2004] EWHC 2543 trenchantly observed, at [80]:

> "The right of freedom of expression is not to be exercised in a vacuum created by the assumption that only the views of the animal rights movement are correct. Those who believe that experimentation on live animals is both morally and scientifically justified also have the right of freedom of expression. Further such people and those who, in the broadest sense, work for them have the right to respect for their private and family life, their homes and correspondence under Article 8."

I respectfully agree. Those observations are as applicable in the context of the defence industry, the war in Iraq and the Israeli/Palestinian question as they were in the context of "animal rights". The task of the Court is to strike the appropriate balance having regard to the rights of all concerned.

The scope and use of the Act:

58 (2) There can be little doubt that at least the primary intention of the Act was to deal with the phenomenon of "stalking"; see the discussion in Archbold (2005), at para. 19–277a. Following on from the pivotal decision of Gibbs J in Huntingdon (*supra*), a series of first instance decisions has resulted in the grant of injunctions under the Act, restraining harassment in "animal rights" and "GM crops" cases. It is unnecessary to list them all; two have already been referred to, namely, Daiichi, a decision of Owen J and The University of Oxford, the decision of Grigson J.

59 There is understandable concern that an Act passed to combat stalking should not be used to clamp down on rights of protest and expression, valued parts of our democratic tradition. It is also true, however, that there comes a point when protest and expression may cross the line into harassment.

60 Ms. Harrison, in addressing this topic and in the main as already foreshadowed, submitted that the Act should be read and given effect to compatibly with the Convention (see, s.3 of the HRA); that, absent violence or the threat of violence, freedom of speech and assembly were not to be restricted; that the first instance authorities were to be distinguished on the ground that in those cases there had been a concerted campaign against individuals and the campaigning groups had the avowed intention of, *inter alia*, employing unlawful means. Furthermore, although the definition of "harassment" in the Act was inclusive rather than exhaustive (see, s.7(2)), Ms. Harrison contended that unless the "harassment" did involve alarm and distress, it was difficult to justify restricting freedom of expression and assembly.

61 For my part, I am prepared to go part of the way with Ms. Harrison's submissions. Plainly, great care needs to be taken in applying the Act to situations of public protest. The drawing of lines in this area, however, involves an intensely factual inquiry and difficult questions of degree. I cannot accept that it would be right to read into the Act fixed limits as to its applicability, whether as to categories of cases or inflexible threshold requirements. So, for instance, while it must be likely that most restrictions on freedom of expression or assembly would result from a risk of violence or the threat of violence, "harassment" is not confined to acts which place the victim in fear of violence. That much is clear from the terms of the Act itself; contrast, for example, the criminal offences found in ss. 2 and 4 of the Act. The right not to be harassed is not or not only a right not to be placed in fear of violence or subjected to violence. So too, it would be inappropriate to read "harassment" as *confined* to conduct which alarms or causes distress, though again, ordinarily, it must be unlikely that conduct which does not amount to that will be restrained by interim injunction. Still further, the avowed intention of an association or individuals whom it is sought to injunct, is, to my mind, essentially a matter of evidence and proof; the fact that individuals or associations express their objectives in more guarded terms cannot confer an immunity from an injunction under the Act, if it is established that their conduct or the apprehension of their conduct otherwise warrants it. Finally, as will be seen, I am not persuaded that the protests in this case can be distinguished or so readily distinguished from those in the "animal rights" and "GM crops cases", even though it may well be that the extremes of conduct in those cases have fortunately not been mirrored in this. It is not altogether without significance, that the Indymedia material includes references to those other cases, suggesting that lessons can be learnt from the tactics there deployed.

62 Some further observations are appropriate as to the use of the Act in the present context:

- i) First, as its terms make clear, s.3(1) of the Act "bites" on an "actual or apprehended" breach of s.1. While an actual breach of s.1 requires a "course of conduct" which must involve conduct on at least two separate occasions (ss. 1(1) and 7(3)), it does not follow that the same requirement is applicable in the case of an apprehended breach. There must of course be a proper evidentiary basis for the apprehension but, as it seems to me, there are no statutory minimum requirements. Certainly one instance of relevant conduct is capable of sufficing. In this regard, I respectfully agree with the observations of McKinnon J in Bayer & Others v Shook & Others [2004] EWHC 332.

- ii) The relationship between the use of a civil injunction under the Act and the availability of the criminal law, gave rise to considerable debate at the hearing before me. As has been seen, the Defendants argued, not unattractively, that an injunction should only be granted if and insofar as the police were unable to control any protests using the available means of the criminal law. With respect, however, this argument is too simplistic. Its fallacy was exposed by Grigson J in The University of Oxford case (*supra*), at [39]:

  "… this submission is flawed as it confuses the terms of a civil injunction with the ingredients of a criminal offence …. The purpose of this injunction is to prevent harassment as defined by the Act taking place. To that end, the restraint is designed to prevent acts which may, if continued, constitute the full offence. It would be pointless otherwise. If the Claimants had to wait for the full offence to be committed, they could rely upon the Criminal Law but the Criminal Law acts retrospectively. A civil injunction is prospective. Necessarily an injunction is designed to catch acts which are less than the full offence. Consequently the Courts have the power to grant injunctions in wide terms to prevent the harassment of a class of persons, for example, the employees of contractors or sub-contractors, so that they may go about their lawful business."

  The matter does not quite end there. As it seems to me, a consideration of the available

means of the criminal law may provide assistance in shaping the appropriate width of any injunction granted.

The merits of the applications

The injunction: The 3rd–5th and 7th–12th Defendants:

63 (1) It is convenient to consider this topic broadly following the headings of Mr. Lawson-Cruttenden's argument and deferring for the moment the position of the 14th–16th Defendants.

64 The Defendants' convictions:

As will be recollected, the 3rd–5th , 7th and 8th Defendants have all been convicted of obstruction, arising out of the 20th May incident. The 9th–12th Defendants have been convicted of aggravated trespass, arising out of the same incident. There can be no dispute in this regard.

65 I start with the 3rd–5th and 7th–8th Defendants. As it seems to me, certainly for present purposes, obstruction, in the context of a mass protest, is capable of comprising “conduct” which could form part of a course of conduct giving rise to the commission of an actual breach of s.1 of the Act. Having regard to the video footage of the 20th May incident, I think that is so in this case. I am not deterred from that conclusion by the fact that an employee, who happened already to be in the EDO building, may be seen to be eating a sandwich. Some employees may simply be more robust than others. But if I am wrong about that, I do not think it matters. These Defendants were prepared to break the law in the furtherance of their protest. That is a relevant consideration in any assessment of future risk as to their conduct.

66 The 9th–12th Defendants committed the offence of aggravated trespass, contrary to s.68 of the Criminal Justice and Public Order Act 1994. S.68 provides as follows:

> “(1) A person commits the offence of aggravated trespass if he trespasses on land … and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land …, does there anything which is intended by him to have the effect —
>
> (a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity,
>
> (b) of obstructing that activity, or
>
> (c) of disrupting that activity.”

Given the *mens rea* of this offence, its relevance to an evaluation of the risk of future harassment is self evident; in my judgment, *a fortiori*, when the context is taken into account.

67 Offences committed as part of the Smash EDO campaign:

For the purposes of this application, I have already concluded that there was a concerted campaign, conducted by Smash EDO perhaps with or amongst others, with a view to removing EDO from Brighton. On the available material published on the Indymedia website and having full regard to the cautions urged on me by the Defendants as to authorship of such material, I am amply satisfied (certainly for present purposes) that the offences of these Defendants were committed as part of that campaign. Any other conclusion would be fanciful.

68 The nature of the Smash EDO campaign:

The protests have thus formed part of a campaign. From my earlier conclusions, that campaign has included, at the least, seriously arguable instances of harassment. I single out, by way of example, targeting of directors' homes or neighbourhoods, photography of employees and their cars, other intimidation experienced by employees in their cars when driving from the EDO premises and criminal damage. As already remarked, there have been too many such instances for these matters to be disregarded.

69 The apprehension of harassment:

This sub-issue was, as might be expected, hard-fought. The Defendants emphasised the fact that their convictions related to a single incident, now some time ago. They had respected their bail conditions. A number claimed to distance themselves from the continuing protests. Even insofar as there was a chance that they might protest again, they argued that there was no or no significant risk that they would participate in actions capable of amounting to harassment.

70 I regret that I am unable to accept these submissions advanced on behalf of these Defendants. All the Defendants with whom I am now concerned have shown themselves willing to commit a criminal offence as part of the campaign against EDO. As a group, the protestors both appear to hold strong views and to be unwilling to consider or respect opposing points of view. Nothing in these Defendants' stance permits me to distinguish their position from that of the general body of protestors. It is one thing to comply with bail conditions; it is another to act responsibly and with restraint once those conditions no longer apply. It is moreover noteworthy that even those Defendants who said that they had not attended protests for a considerable period of time, stopped short of contemplating any undertaking, which might have resolved the matter. In my judgment, should the protests continue and should feelings rise over the coming months, there is a very real risk that these Defendants might come to participate in acts which are capable of constituting harassment of C2.

71 Success at trial:

As already discussed, the question must be posed: are C2 more likely than not to obtain injunctive relief at trial? In my judgment, provided that any injunction is granted in appropriately limited terms, along the lines which I contemplate (see below), the answer to this question is “yes”. The activities of the protestors which I have singled out are indefensible as part of any legitimate right of expression or assembly; they are on the wrong side of the line, regardless of the merits of the underlying cause. If it is necessary to put the matter this way (which I doubt), they are akin or analogous to stalking employees and others concerned.

72 I am not deterred from this conclusion by the provisions of s.1(3) of the Act, furnishing the defences there set out. Those defences have objective requirements; there are real difficulties in the way of the Defendants in seeking to justify their conduct on the ground of the alleged illegality of the war in Iraq (see, Jones & Milling v Gloucestershire Crown Prosecution Service [2004] EWCA 1981); I am not at all attracted to Mr. Mitchell's suggestion that the “reverse burden” (such as it may be) in s.1(3) of the Act, somehow impinges on the Defendants' right to a fair trial (cf. Sheldrake v DPP [2004] UKHL 43; [2004] 3 WLR 976). In any event, I am amply satisfied that the strength of any argument available to the Defendants under s.1(3) is not such as to tell against the views to which I incline.

73 Discretionary Considerations:

If I am right so far, then what might be termed discretionary considerations point one way and in favour of granting interim injunctive relief, coupled with a provision for a speedy trial.

- i) I do not think that damages would be an adequate remedy for Mr. Jones or C2 generally. Questions of identification would be acute, quantification would be complex and the prospects of successful recovery must be very much in doubt.
- ii) Conversely, a temporary restraint on the Defendants and others from actions of the sort which I have singled out, will cause them no real hardship let alone damage should they succeed at trial.
- iii) The balance of convenience overwhelmingly tells in favour of the grant of an interim injunction. At least for the purposes of interim relief, the conduct of some protestors which I have singled out can properly be categorised as harassment, provided only that it occurs on two occasions. Such conduct represents an unacceptable facet of the Smash EDO campaign; it ought to be restrained pending trial and before the occurrence of some or some further untoward incident.
- iv) Important issues do arise with regard to the use of the Act in the context of protests such as those with which I am concerned. Those issues are, however, best resolved in a trial,

rather than in the course of interim applications. Such a trial should take place speedily and I direct accordingly.

The injunction: The position of the 14th–16th Defendants:

74 (2) I can take the position of these Defendants shortly. They were involved in the 2nd September incident. They did trespass but they were acquitted of the offence of aggravated trespass. As already suggested, I do not think that there is any fixed minimum requirement which must be established before a case of "apprehended" harassment can be made out under the Act. But as also suggested, there must be a proper evidential basis for the apprehension. In my judgment, at least for the purposes of the grant of an interim injunction, I do not think that such a basis has been shown against these Defendants, arising from a single act of trespass, now nearly 8 months ago. Nor do I think that it would be right to rely on the (unrelated) convictions of the 14th and 15th Defendants to bridge the gap. I therefore refuse injunctive relief against these Defendants.

The strike out applications:

75 (3) It follows that the applications to strike out the claims against the 3rd–5th and 7th–12th Defendants must fail.

76 As to the 14th–16th Defendants, I have of course refused interim relief. I am not, however, persuaded that the case against those Defendants is either an abuse or otherwise so hopeless that it should be struck out. I therefore refuse the strike out applications with regard to these Defendants as well.

The terms of the injunction

77 I refer here to the terms of the proposed order, set out above.

78 I begin with the definitions. First, I am satisfied that the order should include the wide definition of "Protestor or Protestors". There is very good reason for such a definition; effective relief ought not to be stymied by difficulties of identification. Previous decisions of this Court have accepted the proposed formula and I respectfully agree with them. Secondly, I see no difficulty with the order including the definition of "Protected Persons".

79 I turn next to the provisions of the proposed order as such. In my judgment, there is every good reason for paragraphs (1) and (2)(a). Equally, I think that provision (2)(a)(i) is amply justified. Such photography is intimidating or capable of being so. No legitimate interest of freedom of speech or assembly is furthered thereby.

80 In the circumstances of this case, I am not persuaded of the need for provision (2)(a)(ii). Having regard to the location, the frequency of the protests to date and their duration, I do not think that such a provision is necessary. The Defendants before the Court and other protestors might well wish to reflect on the damage they will do to their own cause by making a nuisance of themselves, not least to local residents. But that is a matter which must take its own course. I am also unwilling to burden the police with the need to enforce such a provision. Whether or not if the noise and nuisance levels were to escalate, the police might have other powers to deal with this matter, is not for me to decide.

81 As to provision (2)(b), I am satisfied that it is justified save in respect of the word "orally", which would have the effect of prohibiting a single shouted comment. Abusive or threatening communications by telephone, in writing, in faxes or e-mails, should surely play no part in any legitimate protest. The leafleting exercises debase the currency of the debate which the Defendants assert they wish to have. Verbal abuse is a different matter. Such abuse reflects of course more on the protestors engaging in it and the cause(s) they espouse than on their targets; it will be unlikely to win any converts. But again, I do not think that is a matter for an injunction. I think C2 are sufficiently robust to bear it. Here, it is indeed likely that should there be sustained abuse or a serious escalation, then the police would have powers to deal with it under the Public Order legislation. I would not wish an injunction to have to deal with one-off incidents of foul language.

82 I think that paragraph (2)(c) is justified. There is an apprehension of such trespass, based on

the actions of some protestors to date. Notwithstanding the availability of other remedies under civil law and (in the case of aggravated trespass) under criminal law, I do think the injunction should extend to this. Legitimate rights of expression and assembly do not extend to invading the property of others. The ground rules for the period until trial should be clear.

83 I have anxiously considered paragraph (2)(d). My initial reaction was that it might be unenforceable or inappropriate, absent a schedule of addresses. But a schedule of the addresses of C2 is the very thing that the Claimants for eminently good reasons would not wish to provide; indeed, it would be self- defeating. On further reflection therefore, I am content to include paragraph (2)(d) in the order. First, I note that the same formula has been adopted in previous decisions. Secondly, there can be no legitimate reason for wishing to picket, demonstrate or loiter within 100 yards of the homes of C2. That would be capable of amounting to harassment, on any view. Thirdly, the language properly considered does avoid the prospect of unwitting breach. The provision bites only on *knowingly* undertaking the prohibited activities. Moreover, the provision only prohibits the *activities* there set out — picketing, demonstrating and loitering. For the avoidance of doubt, there will be no breach of the injunction if an individual unknowingly walks past the front door of a Protected Person and continues on his/her everyday business.

84 I come to paragraph (2)(e). On the facts of this case, I am not persuaded of the justification or the wisdom for regulating by injunction the frequency and number of protestors. What has been objectionable in this case are certain of the protestors' activities; not the frequency of the protests or the numbers of those involved. That said, I am satisfied of the need for an exclusion zone. I will need to discuss its precise terms with advocates, counsel and those parties representing themselves. I would not wish to draw the zone too wide and eat into parkland enjoyed for everyday purposes unconnected with the protests. But I do think that employees of EDO should be free to come to and go from work without interference or obstruction. Given the incidents of criminal damage to date, I can likewise see the force of putting some distance between the protestors and the EDO building — not least with a view to the safety of employees and other individuals. I further think that there is a pressing need to keep protestors off the road and to keep activities relating to the protests away from the road junction between Home Farm Road and Lewes Road; it is not necessary to wait for a road traffic accident before acting.

85 Paragraph (2)(f) is manifestly justified and requires no elaboration. Identifying the names and addresses of Protected Persons is no part of legitimate protest.

86 In the light of the orders thus far made and on the material available to me, I am not persuaded of the need or justification for paragraphs (2)(g), (h) or (i).

87 Standing back from the matter and after careful scrutiny, the restrictions forming part of the injunction have been satisfactorily established and justified. In my judgment, they are proportionate and no more than necessary, having regard to the rights of C2, whether under the Act, under Art. 8 of the Convention (if and insofar as it is applicable), or otherwise.

88 I leave it to advocates, counsel and parties representing themselves to raise with me any other miscellaneous matters as to the terms of the injunction, the position reached concerning the 6th and 13th Defendants, the position of the Quakers, the position of Mr. Gibbons and as to all questions of costs.