



# briefing

Dispute Management - November 2009

## Protesters

Can they be silenced?

**Protestors demonstrating about a course of action taken by an organisation, or about treatment received by a patient, are just two examples of situations in which protestors can cause widespread disruption and affect the successful running of the organisation involved.**

The potential exists for adverse publicity in relation to the subject matter of the protest and also in relation to any steps taken to curtail the protest.

With this in mind, what are the rights of the protester and organisation in question?

### The rights of protestors

The right to freedom of expression is a basic human right recognised in Europe by the European Convention on Human Rights and in the UK by the Human Rights Act 1998. However, this right can be derogated from in certain circumstances as explained within the Convention and repeated within the Act:

*"The exercise of these freedoms, since it carries with it duties and responsibilities, may 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."*

### Courses of action available to an institution facing protest

Bearing in mind the above legal context, there are a number of options available to an organisation, depending upon the subject matter and nature of the protest.

Indeed, the organisation concerned may be compelled to take action against the protesters in order to prevent claims being brought against it by staff, patients and/or other third parties to whom the organisation may owe a duty of care.

In an ideal scenario, protesters wishing to demonstrate against an organisation, will firstly discuss and co-ordinate their plans with the organisation concerned. By doing so, the organisation can make arrangements in advance so that as little disruption as possible is caused, whilst also enabling the protesters to make their views public. However, this is rarely the case as one of the usual intentions behind a protest is to cause disruption.

If the protestors are not willing to engage in discussion in advance of a protest, then it may be possible for the organisation to apply to the civil courts for an injunction, either before or during the protest. Depending upon the circumstances of each case, an injunction can limit the extent of the protest to certain times and/or to prevent certain methods used by protesters which are designed to cause disruption.

For protests taking place on property owned by the organisation, proceedings can be brought against the protesters for trespass, including asking the court in advance for an injunction to be granted preventing their attendance on site for the purposes of the protest. This may also in reality prevent the protest from taking place at all. Should the protestors simply move to public property, such an injunction would of course be ineffective.

Another course of action (again depending upon the nature of the protest) is to involve the Police. Police officers can provide invaluable support at protests, especially those involving an emotive subject, and they of course have powers of arrest and prosecution against individuals and/or groups for offences such as aggravated trespass, criminal damage and the Protection from Harassment Act 1997.

Following the conclusion of the protest, organisations can also bring civil proceedings against protesters if

there has been any damage to property, trespass, defamation and/or harassment and if there is sufficient evidence to do so. The Courts can award financial compensation if such actions are successful.

## Conclusion

Ultimately, an organisation will need to undertake an assessment of its position as follows:

1. assess whether there is a legitimate reason to take action against protesters to prevent them from exercising their fundamental human right to freedom of expression;
2. before deciding on whether to pursue a course of action, carefully analyse the possible disadvantages associated with this, including adverse publicity, the alienation of the public, legal costs and tying-up of management time;
3. if you do wish to take action, which course of action would be the most effective in preventing or limiting the protest.

## More information

Should you require further information, advice or assistance in relation to any of the issues discussed, please contact Joanne Thompson.



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