Neutral Citation Number: [2007] EWHC 947 (QB)

Case No: HQ07X00505

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2007

**Before** :

**MR. JUSTICE TEARE**

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**Between :**

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|---|---|
| **(1) RWE Npower plc (for and on behalf of itself and its Contractors pursuant to CPR 19.6)**<br><br>**(2) John Patrick Rainford (acting for and on behalf of the employees of the First Claimant (as defined) and the First Claimant's Contractors' employees (as defined) pursuant to CPR 19.6)** | **Claimants** |
| **- and -** | |
| **(1) Rev. Malcolm Carrol (acting for an on behalf of the unincorporated association identified as "The Sandles House Group" and all other persons acting in concert with the Defendants to deter, obstruct or prevent the First Claimant's intended use of Sandles House and Radley Lakes by harassment, trespass and any other unlawful means all protestors conducting activities against the Claimants intended use of Sandles House and Radley Lakes, Radley, Oxfordshire pursuant to CPR 19.6)**<br><br>**(2)David Howarth**<br>**(3)Mike Powell**<br>**(4)Christopher Ward**<br>**(5)Anthony Bailey**<br>**(6)Dr.Peter Harbour** | **Defendants** |

**Tim Lawson-Cruttenden (Solicitor Advocate)** for the **Claimants**
**Stephanie Harrison** (instructed by **Liberty**) for the **1st,2nd, 3rd,4th and 6th Defendants**

Hearing dates: 17 and 18 April 2007

## Mr. Justice Teare :

1. The First Claimant generates electrical power in Oxfordshire at a coal fired power station. The ash has to be disposed of and the First Claimant has planning permission to dispose of it in eight former gravel pits in Radley. A number of people, who would prefer the land on which the gravel pits lie to remain as it is, are opposed to the First Claimant's plans to dispose of the ash.

2. On 14 February 2007 the Claimants obtained from Mr. Justice Calvert-Smith, upon a without notice application, an injunction restraining the Defendants from harassing the Claimants and from trespassing upon the First Claimant's land. The Claimants now seek a continuation of that order until trial.

3. Although the Defendants have so far been unable to obtain legal aid to fund their defence, Counsel, Ms. Stephanie Harrison, has been instructed on behalf of all Defendants save the 5th Defendant by Liberty. She has indicated that the Defendants have been unable to advance an effective and full response to the application for an injunction but she was, nevertheless, able to make helpful and clear submissions in support of her submission that the injunction should not be continued and in the alternative modified. The 5th Defendant has not appeared and is not represented. I am told that he may be ill.

4. The application has given rise to issues concerning the threat of harassment and trespass, the width of the activities to be restrained, the status of the First Defendant as a representative defendant, the description of those represented, the effect of CPR 19.6(4) and certain other detailed points on the form of the order.

The threat

5. The Claimants say that in late 2006/early 2007 a group of individuals, said to be the First to Fifth Defendants, occupied Sandles House which was on property at Radley Lakes owned by the First Claimant. The occupation was intended to frustrate the First Claimant's efforts to prepare the land for the receipt of ash. Following a court order the squatters were evicted on 6 February 2007. Media reports suggested that the squatters intended that the squat was but the first phase in their campaign against the First Claimant's plans. A "protest camp" was set up opposite the entrance to Sandles House, protestors trespassed upon the First Claimant's land, registration numbers of vehicles belonging to employees of the First Claimant's employees were taken down, employees were photographed and a car was driven at two employees.

6. The First Claimant had to fell a large a number of trees by 1 March 2007 and feared that its operations would be obstructed. For that reason an injunction was sought and granted on 14 February 2007. Since then photographs which were shown to me illustrate that much tree-felling has been done.

7. Notwithstanding that the immediate purpose of the injunction appears to have been served, at least to some significant extent, the Claimants continue to fear further harassment and trespass. In support of this fear I was referred to a number of documents found on the internet. They come from the period both before and after the eviction of trespassers from Sandles House.

8. Thus, before the eviction from Sandles House occurred a group in possession of Sandles House "opposed to the destruction of Radley Lakes by infilling them with pulverised ash from N powers coal burning Didcot power station" announced their intention to resist eviction and called on "people to turn up who are prepared to defend our stake in the lakes future". The group said they were in need of a wide variety of equipment including "lock on equipment" and "welding equipment". Donations were requested to be sent to RLLF (which the Claimants suggested stood for Radley Lakes Legal Fund). This information was found on a web site called "Earth First! … Direct action for people and planets".

9. Another entry on the web site called for support and equipment including wire mesh, tools and wrenches, climbing caribineers, lock-ons and chains. A phone number was given which I was told was that of the Second Defendant. (This appears to be correct because the same number (less one digit) is listed on the Greenpeace web site giving the number as that of "Dave Howarth".)

10. When an order was made for the possession of Sandles House a message on another web site (Indymedia) reported the order but sent "a call out to anyone to come down and bring cake and lock on tubes". Again, the Second Defendant's phone number was given. Counsel for the Claimants described the language of this message, with justification, as defiant.

11. A news web site, "This is Oxfordshire", reported that the squatters were "professional protestors with experience of campaigns like the Newbury Bypass". It was reported that a tunnel and chamber had been dug in the basement of the house and other hindrances were being created. It was reported that one of the protestors' biggest weapons was "the lock-on obstruction where a protestor embeds their arm locked in a metal tube into a barrel full of cement and other materials."

12. After the eviction the Oxford Mail reported a squatter named Dave (said to be the Second Defendant) saying "We may have lost round one but we will re-group and consider our next course of action. We are not finished yet although we can't go back to the house …" The First Defendant who was described as the spokesman for the protestors is reported to have said "Whatever happens over the next few days we will continue to fight npower. Our campaign is planned in phases and this is just the first of them". The Sixth Defendant was reported as saying "the fight is not over by a long way."

13. Since the grant of the injunction there have been two large scale demonstrations against the First Claimant's intended use of Radley Lakes on 14 February and 10 March 2007. The first involved about 200 protestors and the second up to 550. They appear to have been conducted lawfully and peacefully. Amongst those taking part in the second march were the Mayor of Abingdon wearing his mayoral chain.

14. It seems to me that having regard to the involvement in the protest of "professional" protesters with experience of other campaigns, the call for and use of equipment to make repossession of Sandles House difficult and the statements apparently made by the First, Second and Sixth Defendants that the fight will go on notwithstanding the eviction of the squatters the Claimants have reasonable ground to fear that unless restrained some protestors will continue to trespass on the First Claimant's land and harass employees of the First Claimant and its contractors. It does not seem to me that

this threat has ceased to exist simply because the tree felling required by 1 March has been accomplished or because there have been only peaceful and lawful protests since the injunction was ordered.

15. The evidence adduced by the Claimants is sufficient to justify injunctive relief against the First Defendant (who there is reason to believe holds himself as a spokesperson for those who squatted in Sandles House), the Second Defendant (who there is reason to believe had a leading role in the squat), the Third and Fourth Defendants (who there is reason to believe took part in the squat), the Fifth Defendant (who there is reason to believe took part in the squat and after the eviction set up a tent outside the First Claimant's access to one of the lakes thereby impeding the entry and exit of vehicles from the site) and the Sixth Defendant (who there is reason to believe drove his car at two employees of the First Claimant's contractors and photographed employees in circumstances where it was feared that the photographs would be published enabling other protestors to identify and harass them.)

16. For these reasons I consider it right in principle that the injunctive relief against harassment and trespass should continue.

The width of the restrained activities

17. It is however necessary to consider the precise wording of that relief to ensure that it is not too wide or disproportionate. It is particularly important to ensure that the right of peaceful protest is not impeded to a disproportionate extent.

18. Following the argument and discussion between the parties there is now much common ground as to the terms of the injunction. The represented Defendants were involved in this discussion upon the basis that I considered it right in principle that the injunction be continued.

19. The activities to be restrained are set out in paragraph 6 of the Order. The opening sentence of the paragraph contains a general restraint upon harassment which is then particularised in six sub-paragraphs.

20. There is no dispute as to paragraph 6.1.1.

21. There is a dispute as to paragraph 6.1.2. This paragraph seeks to restrain the publication of information or photographs "designed to make known to other persons the identity of any of the Protected Persons." The Defendants submit that the words "with the purpose of making then a target for harassment by the Defendants or others" should be added so as to permit legitimate reporting or photo journalism. I do not consider that the wording of paragraph 6.1.2 without the additional words imposes a disproportionate restraint on freedom of speech. Reporting may take place so long as the Protected Persons are not identified.

22. There is also a dispute as to a provision to paragraph 6.1.2 which is designed to ensure that when information as to a Protected Person is already in the public domain such information may be repeated. As suggested by the Claimants it states:

> "Provided that

> As and when a Protected Person is voluntarily identified as such for the purposes of a newspaper article or a radio or television programme there shall be no restrain upon repetition of that which is so featured in the Media nor upon the terms of any media response."

23. The Defendants object to the word "voluntarily" on the grounds that this would make the operation of the provision too uncertain "given that it would be impossible for the Defendants to know whether or not the Protected Person's identity had been put in the public domain voluntarily or not." I do not think that the inclusion of the word makes the operation of the proviso too uncertain. A simple request of the Protected Person (or of the Claimants' solicitors) would elicit whether the information as to his or her identity had been put in the public domain voluntarily or not.

24. So far as paragraph 6.3 is concerned the Defendants wish to restrict the restraint to "deliberate" obstruction. The paragraph expressly excludes obstruction which is incidental to any lawful demonstration of protest. I do not consider that there is real need for the additional word.

25. Paragraph 6.4 restrains trespass. During the hearing it was suggested that this should apply only to entering the First Claimant's land for the purposes of harassment. This suggestion was made because it was said that there was a common law right to enter and use the First Claimant's land for recreational purposes. However, the Claimants had demonstrated a serious issue to be tried as to their rights over the land and the Defendants' case that there was a common law right to use the land for recreational purposes seemed to be very flimsy. The balance of convenience lay in protecting the apparent rights of the First Claimant's to their land. I therefore rejected the Defendant's suggestion. It is now said that the words "without the permission of the First Claimant's their servant or agents" should be added. By way of example the Sixth Defendant took part in an otter survey with the permission of the First Claimant. It seems to me sensible to include these additional words.

26. Paragraph 6.5 is disputed on the grounds that within 400 yards of lake E "there is a wide variety of public land and a significant amount of residential and other properties over which the First Claimant has no rights whatsoever to determine what the owners do with their property." There seems to me some force in this point. The original wording of this restraint provided for a distance of half a mile from lake E and was intended, as I understood it, to prevent the setting up of protest camps or tents interfering with the First Claimant's use of public highways in the vicinity of the lake. There are two such highways, Thrupp Lane and the Byway Open to all Traffic ("Boat"). I suggested that a shorter distance was appropriate and hence 400 yards was suggested which seems to me more reasonable. To give effect to the purpose of the restraint and the point made by the Defendant the words "on Thrupp Lane or the BOAT" should be inserted before the words "within 400 yards".

27. As to paragraph 6 it seems to me that this is an appropriate restraint having regard to the evidence to which I was referred.

28. The represented Defendants very properly and responsibly offered undertakings in place of formal restraining orders. However, since not all Defendants were represented and one was a representative Defendant I consider it appropriate that

restraining orders should be made notwithstanding the offer of undertakings from the represented Defendants.

The status of the First Defendant as a Representative Defendant and the description of those represented.

29. CPR 19.6 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."

30. A statement of James Welch, the Legal Director of Liberty who represent the Defendants (save the 5th Defendant), informed me that the First Defendant objected "to being included in these proceedings by virtue of a representative order under CPR 19.6. It is disputed that the groups identified exist at all or sufficiently to constitute an unincorporated association and even if they do that it is appropriate for him to represent them."

31. I have already recounted the entry on the internet to the effect that the First Defendant, who was described as the spokesman for the protestors, is reported to have said "Whatever happens over the next few days we will continue to fight npower. Our campaign is planned in phases and this is just the first of them". Thus it appears that his interest is to frustrate the First Claimant's plans to use Radley Lakes for the disposal of ash and that this interest is shared with those persons who squatted in Sandles House. It is submitted that the "Sandles House Squatters Group" is not an unincorporated association. However, it appears to be a group which currently has a common aim, namely, to frustrate the efforts of the First Claimant to deposit ash on their land. It appears to have a spokesperson, namely, the First Defendant. These considerations support the suggestion that those who squatted in Sandles House and who wish to continue their efforts to frustrate the First Claimant's plans may reasonably be described as an unincorporated association. In the light of the evidence of Leon Flexman, a contractor of the First Claimant, who said that on 24 January 2007 outside the Oxford County Court the First Defendant told him that he was "the appointed spokesperson for the group" it seems appropriate that the claim in this action be made against him as representative of the Sandles House Squatters Group. I was told (although there was no evidence) that he left Sandles House once the repossession order was made but it does not follow that he has a different interest from those who continued to squat.

32. He has also been sued as representative of "all protestors conducting activities against the First Claimant's intended use of Sandles House and Radley Lakes." It has been said, I think with some force, that such protestors include not only those who wish to protest against the First Claimant's plan to put ash in the Radley Lakes by lawful

means (such as the Mayor) but also those who are willing to use unlawful means. Although the notes in the White Book (at 19.6.3) suggest that CPR 19.6 is designed to allow representative proceedings to be treated, not as a rigid matter of principle, but as a flexible tool of convenience in the administration of justice I consider that it cannot fairly be said that those who wish to protest lawfully and without causing harassment, such as the Mayor, have the same interest as to who are prepared to use unlawful means and to harass the Claimants. Similar considerations led Henry J. to refuse a representative order in *United Kingdom Nirex Ltd. V CEGB* (13 October 1986 unreported).

33. The Claimants have, I think, recognised the force of this point and have therefore suggested that the additional group to be represented by the First Defendant should be redefined. The essential characteristic of this additional group is that its members are acting in concert with the named Defendants and are willing to use unlawful means to frustrate the efforts of the First Claimant to deposit ash in Radley Lakes. Such a group could therefore be described as "all other persons acting in concert with the Defendants to deter, obstruct or prevent the First Claimant's intended use of Sandles House and Radley Lakes by harassment, trespass and any other unlawful means". The Defendants objected to a reformulation because the group represented was unclear and uncertain. However, I consider that the above reformulation takes account of the Defendants' objection based on conflict of interest and is sufficiently clear and certain.

<u>The effect of CPR 19.6(4)(a) and (b)</u>

34. This provides:

> "Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule-
>
> (a) is binding on all persons represented in the claim; but
>
> (b) may only be enforced by or against a person who is not party to the claim with the permission of the court."

35. In the order made without notice paragraph 7 provided:

> "The Claimants have permission to enforce the Order herein as against the Defendants and the protestors as defined in this Order, pursuant to CPR 19.6(4)(a) and to the Protection from Harassment Act 1997."

36. The Claimants wish to retain this paragraph so as "to ensure that a power of arrest arises, under s.3(6) of the Act, in the event that Protestors breach the terms of the injunction 'without reasonable excuse' ". They wish to make it clear to the police who they may arrest. The Defendants submit that this is misconceived, essentially because, it is said, a warrant for arrest can only be sought against a defendant (as opposed to a person represented by a named defendant) pursuant to section 3(3) of the Act and only a defendant (as opposed to a person represented by a named defendant) can commit an offence contrary to section 3(6) of the Act.

37. As it happens the very same dispute arose in another harassment case which I heard after this case. It (or a very similar dispute) also arose before Holland J. in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB. The point therefore seems to be one of importance in this field.

38. Section 3(3) and (6) of the Act provide:

> "(3) Where-
>
> (a) in such proceedings the High Court or a county 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 or a county 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"

39. Injunctions made under the Act may thus be enforced, not only by the usual civil remedies of contempt, but also by the criminal law.

40. Representative parties are creatures of CPR 19.6. Sub-rule (4) expressly deals with the question whether an order is binding upon a person "represented in the claim" and whether an order may be enforced against a person "who is not a party to the claim." This rule has, as I have indicated, recently been considered by Holland J. in *Huntingdon Life Sciences Group PLC and others v Stop Huntingdon Animal Cruelty* [2007] EWHC 522 QB when an enforcement provision similar to the one made without notice in the present case was sought but not pursued after Holland J. raised a question as to the propriety of the provision. Holland J. was asked to record his reasoning. He said as follows:

> "42. Turning to the proposed Final Order it serves expressly to restrain conduct which amounts to harassment within the meaning of the Act. The issue that does arise is as to who is or could be a Defendant for the purpose of enforcement, whether civilly or criminally, given reliance upon representation as provided for by CPR 19.6. The answer lies in CPR 19.6(4):

> "Unless the Court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule –
>
> (a) is binding on all persons represented in the claim; but
>
> (b) may only be enforced … against a person who is not a party to the claim with the permission of the Court."
>
> 43. In the result, first, this Final Order will be binding upon "protestors", that is upon those within the wider ambit of Dr. Gastone's representation. That said, second, it is not enforceable, certainly civilly, against any individual without the express permission of the Court. This reflects a safeguard introduced into CPR 19.6 to counter risks implicit in having a wide and ill defined catchment area in terms of affected persons. The discretion is specifically drawn in this context between 'binding' and 'enforcing': HLS have the benefit of a binding Order but if they wish to enforce it against any individual then they must seek ad hoc permission from the Court, presumably based upon proof of such factual circumstances as to would serve to justify enforcement as for a contempt. By purporting to accord CPR 19.6(4)(b) permission in advance the Court would in effect be circumventing the CPR 19.6 concerns by predicting circumstances serving to justify enforcement when such must as to any individual case be a matter for speculation as at the making of the Order."

41. I respectfully agree with the approach of Holland J. CPR 19.6 expressly addresses the question as to when an order may be enforced against a person who is not a party to a claim. The answer is that an order may be enforced against such a person "with the permission of the Court." In the case of orders made under the Protection from Harassment Act 1997 the order may be enforced either civilly or criminally. But there is no reason why the need for the permission of the Court should not be required equally whether the claimant wishes to enforce an order by civil means or have it enforced criminally.

42. Until permission to enforce against a person represented in the claim is granted I do not consider that a person represented in the claim is a party to the claim. An illustration of the use of CPR 19.6 and its predecessors is to enable proceedings to be brought against unincorporated associations. An unincorporated association has no legal personality and so cannot be a party to a claim. It can therefore only be sued if there is a person who can represent the association as a defendant; see *Oxford University v Webb* [2006] EWHC 2490 per Irwin J., paras.42-62.

43. Once the claimant identifies a natural person who is a member of the unincorporated association or is otherwise within the class of persons represented by a named defendant and obtains permission from the Court to enforce the order of the Court against that person the latter is, in my judgment, party to the claim. The order is binding upon him and the Court, having addressed his individual circumstances and afforded him an opportunity to make representations, has ordered that the injunction may be enforced against him. Until the claimant seeks permission to enforce the injunction against him (or her) the latter is not before the Court.

44. In the present case the Claimants are seeking permission to enforce the injunction granted by this Court in advance and without identifying the natural persons against

whom, in addition to the named Defendants, the order may be enforced. If this were a legitimate use of CPR 19.6(4)(b) it would mean that the Court would have no opportunity to consider whether the circumstances of any particular individual (not being a named defendant) justified enforcing the Court's order against him before it was enforced against him. CPR 19.6(4)(b) ensures that such an individual will have an opportunity to make submissions as to whether the Court's order should be enforced against him before it is so enforced. The Claimants' approach would deny him that opportunity.

45. The Claimants have relied upon the terms of section 3A of the Act as inserted by the Serious Organised Crime and Police Act 2005, s.125. This provides that the victim of harassment may seek an injunction "restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction." But, in my judgment, the phrase "any person or persons mentioned or described in the injunction" (on which reliance is placed) refers to the claimant or victim of harassment and not to the defendant. The claimant may, as in the present case, represent many "protected persons" who are not named as claimant but are described in the injunction.

46. I have therefore decided not to accede to the Claimants' request. Since this question has been so keenly debated it is appropriate to replace paragraph 7 with an order such as that suggested by Ms.Harrison at paragraph 21 of her written submissions dated 20 April 2007: "This Order is binding on the Defendants and those represented by the First Defendant. For the avoidance of doubt it is not to be enforced against a person who is not a party to the claim without permission of the Court pursuant to CPR 19.6(4)(b)."

47. I recognise that the First Claimants desire to achieve certainty so that the police know whom they may arrest upon the grounds that there has been a breach of the injunction; see section 3(6) of the Act. However, for the reasons I have given, I do not consider that that concern can be met by declaring that the injunction may be enforced pursuant to CPR 19.6 against unnamed persons without their individual circumstances being addressed by the Court. (It is to be noted that the problem does not arise where a person pursues a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. That is an offence independently of the injunction; see section 2 of the Act. The problem only arises in the context of activities lawful in themselves but which are restrained by injunction.)

48. There may be other ways in which the Claimants' concerns (which I suspect are shared by the police) can be met. The injunction is certainly binding on those who fall within the class of person represented by the First Defendant. It may be that that enables such persons to be regarded as "defendants" for the purposes of the Act (applying a broad and purposive construction of the Act) and that an arrest may be regarded not as part of the process of enforcement (prosecution and conviction) but as a preparation for that process. But is not appropriate for me to determine whether or not the Claimants' concerns can be met in this way assuming a hypothetical case and without hearing submissions from the prosecuting authority and the defendant in that prosecution.

Other points

49. Service. As requested in paragraph 22 of Ms. Harrison's submissions dated 20 April 2007 service on the 1st.-4th. Defendants should be on their solicitors Liberty. The request in paragraph 23 of those submissions for non-disclosure of the Sixth Defendant's address appears reasonable.

50. Variation. Paragraph 11 of the Order refers to 14 days' notice of an application to vary and the Guidance Notes refer to 24 hours' notice. Ms. Harrison submitted that any variation by the Claimants should be on 3 days' notice. It seems to me that fairness requires that there should be a uniform notice period for a variation by any party. I suggest 7 days.

51. The schedule of evidence. Reference should be made to the additional statements which were put before the Court on the application before me.

52. I will therefore order that the injunction be continued subject to the modifications which I have indicated in this judgment. I request Counsel to draw up an agreed order on the basis of this judgment to be ready when judgment is formally handed down.