

Injunctions are basically a way that companies can buy themselves personalised laws. As such they are complicated and vary quite widely, but there are three things you need to do if you receive one:

- Don't talk about it. Especially on email or social media.
- Ring us as soon as possible so we can help you go through the details and plan the best course of action. This is time critical if you're to effectively challenge the injunction.
- Read this guide!

Dealing with injunctions – a brief protesters' guide

What is an injunction?

An injunction is a Court Order which orders one or more people to stop doing something. The court makes that order following an application made against you by someone who can demonstrate that your actions are, or will be, unlawful.

Some examples of things which could be grounds for an application for an injunction:

1. Entering into or staying on someone's land without their permission.
2. Blocking the highway.
3. Trying to stop workers going to work.
4. Publishing untrue derogatory statements.

There are two types of injunction:

Civil injunctions – these are less serious and do not give the police any powers to arrest or prosecute anyone. In order to enforce a breach of a civil injunction the company must notify the courts and provide the details of those who breached them. The courts then summon the protesters to a hearing – during which they can argue that they weren't aware of the injunction, or that it doesn't apply to them. Although less serious, people who breach a civil injunction can be found to be in Contempt of Court which is a criminal offence.

Protection from Harassment Act injunctions (PfHA injunctions) – these more serious injunctions are issued under the Protection from Harassment Act 1997 and do give the police the power to arrest Defendants who breach the Order, for the offence of Breach of Injunction. **However, there are protections within the act which make it difficult for the police to prosecute under it.** We strongly suggest you contact us if you are arrested for breaching a PfHA injunction.

Breaching an injunction may be an offence, which is punishable with a fine or imprisonment. For more info on the different implications of the two types of injunction, see 'What happens if I break an injunction?' below.

Injunctions in a campaign context

The rest of what happens next is the by-product of a system that is designed to protect private interests over the public good. Injunctions allow companies to buy their own personalised laws. Do not expect it to be fair.

Dozens of others have been enjoined while at the forefront of campaigns that they went on to win, even though they didn't 'win' their injunction cases.

Sometimes injunctions have been a major strategic error on the part of the complainants and have massively amplified the protest group's work. Sometimes they've been well written and will frustrate your preferred tactic. Sometimes they've been an irrelevance. Later in this document there will be some examples of the context in which other people have worked around or with their injunctions, but every instance will be different.

Getting an (interim) injunction

The company will usually hire lawyers to apply to the court for an injunction. If it is an emergency the court may grant an injunction straight away, over the telephone. Very occasionally injunctions have been done 'ex-parte'. This is a tactic whereby the protesters are not told that an injunction is being sought, and are not able to represent themselves before the court, even when they are aware of the situation.

Note: Most injunctions against campaigns and protests start off being interim injunctions. There still has to be a final hearing with all parties able to argue the terms of the final injunction. However, interim injunctions are very important in that they set the initial terms of discussion and often go on to be rubber-stamped by the court as final injunctions if not challenged. During applications for interim injunctions, there is no need for the 'evidence' from the company claiming it (the Claimant) to be proven. This means they are allowed to rely on hearsay evidence against the Defendants, which is often incomplete and full of false inferences, in order to get as strict an injunction as possible. Unfortunately, how much this is accepted by a judge is a matter of luck.

Injunctions can be brought under different bits of legislation. For many years they were toothless and ignored by protesters, particularly around the environmental movement. However, from 2003, the Government supported the bringing of injunctions under the Protection from Harassment Act 1997 (the 'Stalkers Law' / PfHA), which had much tougher penalties and wider powers. It is important to find out what legal powers an injunction is brought under, as the consequences connected to it may vary considerably, independent of what the terms of the injunction are.

Being served with an injunction

Those who are the target of the injunction have to be made aware of it. It has to be 'served' according to the terms set out in it.

Standard service means giving you the document or leaving it at your address. This can mean detectives in hard hats running round road protest sites dropping bundles of paper in front of people when on the loo, so they can't run away. It can just mean posting the injunction through your front door.

In protest cases, the court often makes an order for 'substituted service' and says that they can serve the injunction by simply putting notices up in the area where regular protests have been happening,

or by announcing it over a megaphone etc. Some campaigns have been ordered to put notice of the injunction on their websites (contact us for more info if you are ordered to do this).

The judge needs to be satisfied that you were aware of the injunction for you to be covered by it.

They may time serving the injunction to coincide with a point where they know you will be busy and too preoccupied to deal with it properly- a few days before a national demonstration for example. If you're engaged in such organising, particularly if it's the sort of activity that is openly calling for borderline unlawful action, try to have a contingency process in place to deal with this eventuality.

It is worth noting that not accepting a copy of an injunction doesn't enable you to say you haven't been served, although generally if there are going to be prosecutions arising out of it, the servers will usually try to take video/photographic evidence of the serving anyway. Serving the injunction can simply amount to touching someone with it or dropping it at their feet.

Though injunctions are civil matters, it is not unknown for the police to actively participate in either serving or facilitating the serving of copies on people.

Whether or not an injunction is enforceable will depend on the individual circumstances; the type of injunction, whether it can be proven that you've been served or that you are in fact a Defendant as defined in the injunction.

Seeking support

We'd encourage you to contact us as soon as possible so we can help talk through the situation and offer support in dealing with the injunction and the process of seeking legal advice. NETPOL have an online list of recommended civil solicitors that can help in injunction cases. Unfortunately it is now extremely difficult to get legal aid for contesting injunction cases. It may be worth trying to seek support from Non Governmental Organisations in terms of either funds or expertise. You can also represent yourself. If you chose to represent yourself we may be able to organise support.

Public fundraising for such cases can be an interesting and complicated area, see the later question of 'to publicise or not to publicise'.

Because of the differences in the two types of injunctions, we will provide varying information for each within some of the following sections.

Appearing in court for the interim injunction

This often happens at a brutally short interval after the injunction is served, a few days or a week is not uncommon. This is your first opportunity to contest the parameters of the injunction. However, in some cases the time to actually reach final trial can take many years, during which time the terms of an interim injunction will be binding.

In instances where there are no named individuals on the injunction, someone will need to put themselves forward to be named on the injunction in order to defend against it in court. Ideally they should be someone sensitive and responsive to the wider campaign's aims, someone with no assets to lose, who is comfortable acting in court and doesn't have a contentious legal status (not someone with visa issues or ongoing criminal cases etc).

Who's covered

Before serving these papers on you, they'll ring up the courts and ask for a wish list of people they want covered by the injunction. They can name specific individuals, broader groups, or 'Persons Unknown'. Often they will include a mix of the three. This is their most optimistic list of desires, if you choose to contest it then it may well be moderated slightly by the court.

Claimants will sometimes deliberately include other groups with which you have little or no link to in order to increase their case for interim injunctions. They can get away with this because in civil courts, the standard of evidence is not as high as it would be in the criminal courts.

'Persons Unknown' is effectively anyone and everyone who may want to do something that the injunction is seeking to stop them doing. While courts will grant injunctions based on 'Persons Unknown', on the whole they are reluctant to do so, and will often ask the Claimants to provide named individuals. In some cases, those named on injunctions appear to have been relatively random, or simply fake names issued as part of press releases. But most often the people named on it will be the most high profile organisers.

In the past groups have been able to bolster their campaigns by drawing attention to injunctions that try to specify wider groups (e.g. anyone who's looked at a particular Facebook page or read a particular handbook) as the public often find this particularly outrageous. In the instance of the Heathrow Climate Camp injunction, where the coalition mentioned included all members of the RSPB, the presiding judge had to announce an interest in the case before starting, because she was a member... More on this later.

Because of the potentially wide catchment of Defendants, you may be bound by the terms of an injunction just because you know of it if you can be proven to fall under 'Persons Unknown' or a named group featured in the injunction

What's covered

The company wish list handed to the court will also include things they want the Defendants to stop doing. These can range from not damaging their property, to not speaking to the media about an issue, or being banned from a wide geographical area.

In some cases they can claim that the persons named are liable for the costs of the company or individual bringing the case. They have attempted to claim that if you are seen to incite others to action then you become financially responsible for the behaviour of others, even if you've never met them or have even subsequently urged them not to act. They can claim that all of your assets could be seized as a result.

This is obviously a very frightening prospect, but in recent English protest law has only ever been implemented once to our knowledge. Dealing with this aspect will be covered in more detail later.

Many people have hoped to challenge injunctions under the Human Rights Act, but this has many exemptions which have shown it to be a rather weak tool for fighting injunctions. What the Human Rights Act does in the main, is introduce the notion of proportionality, that is, any restriction on the rights under the Act has to be proportional to what is being claimed. For example no court will agree for your right to access private land, without it being agreed by those who own the land.

Final hearing

If you have representation, then a lot of bargaining on the final contents of the injunction is likely to be done over the phone, email or post in advance, and you may not need to appear in court. If you are representing yourself, or want to make a show trial of the process (see below) then you can call a number of witnesses to help you contest the case, although the judge can set limits on the amount of evidence heard

Though legal representation is preferable, it is more than possible to fight injunctions in person. In some cases, having a mix of legal representation and 'litigants in person' can be an effective tactic, although it's important for you to work together in these situations. With increased pressure on legal aid, getting representation is not always possible. See 'seeking support' above for suggestions.

To publicise or not to publicise?

There is a tactical decision which needs to be made quickly after you receive an injunction; do you publicise it or not?

This answer will depend on the nature of the injunction and the nature of your campaign.

If the injunction could be seen as unreasonable to a neutral person – if it tries to ban free speech or infer that upstanding members of the RSPB might be implicated for example, then publicly taking on the bullies is a story that some parts of the press may be interested in. This can amplify your campaign and demonise your opponents, who will be particularly sensitive to this if they have a product to sell directly to the public. However, such strategies will always depend on an element of luck, and to a degree the sympathetic profile of the Defendants. The public are notoriously conservative on who they regard as sympathetic. Even with positive media and/or public support, you are unlikely to win the injunction battle but it may take you a step closer to winning the campaign war.

It may be that your campaign is primarily about raising awareness of an issue rather than being able to take direct action. It may be that a priority for the group is to demonstrating the openness and accountability you'd like to see in others. A classic example of this was the Genetix Snowball project of the late 90s. See case studies below.

The Claimants are also likely to make a noise about their injunction to the press themselves and at some point you may decide that while engaging with such stories may inflame them, it's better than leaving their assertions unchallenged

However, it is worth being aware that the courts are a very difficult platform to manipulate to campaign ends, and that unless you have a very stable and unified group this tactic risks being divisive. Particularly if those covered are a network of groups, some local, some national, with an interest in a variety of tactics.

By talking about the injunction and spreading word of it, particularly by traceable means like social media and the press, you risk broadening the number of people the Claimants can reasonably assert knew about the injunction and were therefore covered by it. For example, by publicly commenting on or 'liking' a post about an injunction on Facebook, people may then place themselves more open to prosecution if they are later proved to be a Defendant in breach of the Order. So publicising an

injunction can help to do the Claimant's job for them and put your supporters at risk.

There are no right or wrong answers, it may be best to simply assess what the group has most energy for in the next six months and use that as your guide.

What happens if I break an injunction?

If someone is caught breaking an injunction, and it could be claimed beyond reasonable doubt that they were aware of the injunction at the time and are covered as a Defendant, then they can face prosecution, the process for and severity of which will vary dependent on the nature of the injunction.

For Civil injunctions: Civil injunctions do not give the police the power to make arrests. In order to prosecute someone for breaching a Civil injunction, the Claimants need to apply to the court for an 'Order of Committal' against the Defendants they claim have breached it. To do this, they will need to provide the names (and potentially contact details) of the Defendants so the court can summon them to attend a hearing. This makes it very difficult to enforce a Civil injunction if the Claimant cannot identify individual protesters. During a Civil injunction breach hearing the Defendants will have the opportunity to argue that they aren't covered as a Defendant, weren't aware of the injunction or didn't breach it. However, if these arguments fail, the Defendant can be found to be in Contempt of Court. Contempt of Court is a surprisingly serious offence which usually results in a custodial sentence. This would normally be relatively brief, ranging from a few days to a few months, but the length of time is entirely at the discretion of the judge.

For PfHA injunctions: This type of injunction does give the police the power to make arrests. However, as mentioned earlier, there are protection clauses within the Protection from Harassment Act which make it difficult for the police follow arrests with prosecutions. We strongly suggest you contact us if you are arrested for breaching a PfHA injunction. If a Defendant is liable for prosecution, they could be charged with Breach of Injunction, for which the potential sentencing is much higher than that for breaching a Civil injunction.

For both types of injunction, to be taken to court, the Claimant and/or police would need to provide evidence that you breached the injunction. This would mean identifying you committing an act banned by the Order – in many cases, catching you in the act. In practice, enjoined individuals have been known to spend days or weeks in autonomous spaces they're technically enjoined out of, wearing limp disguises, without repercussions. However this cannot be relied upon and how keen the Claimants and police are to enforce the injunction will depend on the specific campaign.

A paradoxical benefit of injunctions can be their capacity to up the stakes and generate martyrs. An injunction can render even simple acts like walking onto a field something that puts people in prison. In the past, groups or individuals have planned injunction breaks. Such defiance creates a drama that can demonstrate strength of feeling on the issue and the lack of confidence of your opponents. While this clearly isn't for everyone, it is something to bear in mind if you want to regain the initiative on the process at your own convenience.

The implementation of injunctions against 'Persons Unknown', at a reasonable time after the serving of the papers, is relatively untested territory. As has been mentioned, the courts need to be satisfied that anyone breaching them was aware that an injunction was in effect to be covered by it.

What happens if they make a financial claim against me?

Being named on the injunction makes you open to costs. Normally, if individuals accept the terms

of the injunction straight away, or simply do not fight it, then the court is unlikely to make a cost order against them. However, most injunctions have cost orders that are known as 'joint and severable'. That means, that any one person can, in theory, be held for all the costs of the other Defendants who chose to fight it.

Costs come in two forms:

1. Legal expenses for bringing the claim against you.
2. Damages for the perceived impact your activities may have had, or financial penalties should the injunction be broken.

So far, to our knowledge, those with no assets have not experienced successful attempts to retrieve money from them, but this isn't impossible. Usually, the Claimant and courts are only interested in claiming significant damages off individuals they know have assets worth the expense of extracting, making anyone with property considerably more vulnerable.

This tactic can be effective for Claimants from a 'divide and conquer' perspective. Ensuring that only those perceived as more socially marginal are in a position to engage in action. Where possible discuss this scenario in advance within your group, creating a safe space to draw out the reasonable fears and frustrations it generates. There are often creative ways around such barriers when the dust has had a chance to settle.

Case studies

What follows gives you a bit of an idea of some of the different ways injunctions have played out. In several instances we have taken out the names of those groups or individuals to protect those involved.

Fracking site occupation, injunction used to smear activists in press

A group occupied a proposed fracking site for a limited period of time to raise awareness of its location. After vacating the area a high profile person in the campaign and 'Persons Unknown' were issued with an injunction banning them from returning to the area. Distressing and totally unfounded allegations that the group were somehow implicated in the killing of a cow and an assault on a security guard were published in the local press as a consequence of the phrasing of the injunction. The named person was fined many thousands of pounds, but being without assets, the amount remains unpaid.

Genetically Modified crop mass action short notice injunction

An event called for mass public removal of a Genetically Modified crop, on the basis that GM pollen pollution poses an unlawful threat to others property – a case which had been argued and won on several occasions in the criminal courts. However there was no opportunity to lay out the case for potential unlawfulness of the claimants behaviour.

The preamble to the demonstration had by necessity included farmers and smallholders talking about why they felt compelled to act on national media. This made them vulnerable.

While an injunction was anticipated, the timing (4 days before the rally) and its wide reaching implications were not. 5 spokespeople, including a farmer whose livelihood and that of his sons was tied to his inherited farm, were threatened with the confiscation of all assets. Not just if they were seen to take part in the process - but if anyone else attempted to remove the crop.

A member of the group was granted free advice on how they could act for themselves. This

primarily involved emailing the Claimants firm and the clerk of the court directly requesting a change of the leading name on the list from the farmer to the asset-less activist on the list. No one was able to attend the court hearing in person. Clarity on the 'lead' protester wasn't established until after the action.

On the day of the demo those listed chose not to warn the crowd of the potential implications of effective action. Injunction papers had been posted on trees and gateways in the surrounding area but there didn't seem to be a widespread knowledge of them among those gathered. In the event heavy police presence prevented anyone from actually gaining access to the trial site.

Protesters arrested for taking photos outside a company

Protesters campaigning against an animal testing laboratory were arrested for breaching a PfHA injunction. They had taken photos of their demonstration, but the terms of the injunction banned photographing the staff. The police were quick to use the injunction to try to stop the protest and jumped at the opportunity to allege that the photos could have included staff members. The protesters were arrested and had their houses searched and property seized while in custody. They were later convicted and fined.

No Dash For Gas: a great example of media jujitsu

A group occupied the chimney of a newly constructed gas fired power station for over a week. While the injunction against them was upheld, the claims for 5 million damages against them associated with it helped turn around the media silence on the story. The social media petition to stop the damages was a great engagement tool for wider supporters, and the public perception was that the activists involved 'won'.

The Heathrow Climate Camp: a total failure to injunct people beyond those named

This was a classic example of the injunction enhancing the campaign. It created a media storm in the run up to the aviation expansion protest camp that helped nearly double the event's size from previous years. The camp went ahead despite the injunction being upheld against the named Defendants. It is believed that several of them donned dodgy wigs and moustaches and spent the week on site anyway.

Peaceful protest leads to trial at The Old Bailey

Two animal rights protesters held a short, peaceful protest next to the stall of a notorious animal testing laboratory, at a university careers fair. Although neither the laboratory or university complained about the protest, the police saw footage of the demonstration online and seized the opportunity to try to prosecute the activists, who were well known protest organisers. The police initiated a criminal case against the individuals, arresting them for allegedly breaching the injunction by harassing the staff members who were manning the stall. After many months on bail with restrictive bail conditions, the protesters ended up going to trial in The Old Bailey, the UK's most serious criminal court, facing imprisonment. Through some clever legal arguments they managed to get the case thrown out at the last minute, but the threat of prison had been very real.

Drones Factory injunction overturned by judge, all cases dropped

A factory implicated in the production of military hardware used by the Israeli army against civilians had been subject to peaceful protests for some time. The day before a mass demonstration there an injunction was issued against the group calling it, and bundles were served on people who arrived on the day. Dozens were arrested for breach of injunction. A team, including people with legal experience, worked on a defence for the final injunction hearing which happened after the demonstration. The judge that had issued the interim injunction announced that he had not been informed of the previous peaceful protests at the site, and had this information not been omitted he would never have granted the interim injunction. He retrospectively withdrew the injunction.

However it still took over a week for the Crown Prosecution Service to withdraw their cases against people who had breached an injunction which now no longer existed...

SmashEDO fought through the courts and won

The attempt by arms manufacturers EDO MBM to restrict protest outside their Brighton factory ended in expensive failure. Their attempt to secure a no-protest exclusion zone with an injunction under the Protection from Harassment Act has resulted in unconditional surrender after a year-long High Court battle. The case is estimated to have cost the company upwards of £1 million. EDO MBM were forced to pay the protesters costs, which ran to tens of thousands of pounds.

EDO brought the injunction claim against 14 protesters and two protest groups in April 2005, and by bringing spurious evidence into the case were able to get an interim injunction against all protesters

The Defendants argued consistently that the use of the Act to restrict protest infringed their rights under articles 10 and 11 of the European Charter for Human Rights. This was dramatically illustrated by the imprisonment on remand of two protesters for alleged breaches of the injunction. Both cases were subsequently dropped before reaching court. Protesters were placed under threat of five years imprisonment for any breach of the injunction terms that prohibited simple acts such as standing in the road.

The defence lawyer asserted that there was likely to be evidence that implied improper relations between Sussex Police and EDO and it was possible that arrests of protesters were made to provide an atmosphere of disorder to convince a high court judge to give the injunction.

EDO tried to settle the case out of court. Those Defendants who were represented by publicly funded lawyers had no choice but to accept the generous settlement offer as it spelled the end for legal aid funding, but the three people who represented themselves refused the deal as it involved signing undertakings that placed restrictions on their future conduct, and went on to win the case at a public hearing.

Animal rights campaign injunction threatens to confiscate campaigner's home

A woman named on an injunction for having allowed her house to be used as an address for a campaign was found liable for costs when the Final Order was given. However, she was able to argue that this would cause her to lose her home, which would invoke other parts of the law. In the end, the judge ordered that a charge was put on her house, so she was not required to pay the costs immediately. She has subsequently applied to have the charge removed on the grounds that the campaign no longer exists. Further reading on this <http://www.smashedo.org.uk/pressreleases/06-05-07.htm>

Genetix Snowball, injunctions and accountability

Genetix Snowball was a campaign that sought to model the accountability they wanted to see by demonstrating it in their actions. In 98 they set the media agenda for crop removals by announcing that they intended to decontaminate sites and conducting interviews about their reasons for doing so. They aimed to escalate the numbers involved each time (hence the Snowball)

An injunction was obtained against the five women who launched the project which restrained the Defendants from uprooting, interfering or damaging Monsanto's plants or encouraging or conspiring with others to do so. This generated further news stories, but somewhat stifled the original vision of ever increasing numbers involved in their work. Actions on crops continued by covert groups and on mass demonstrations.

<http://www.monbiot.com/2008/12/23/the-paranoia-squad/>

<http://www.monbiot.com/2007/08/07/this-is-now-a-protest-for-democracy/>

Terms of reference used within this guide

Claimant: the person or institution who has requested the injunction e.g. the company subject to a campaign against them.

Defendants: the groups or individuals named on the injunction, who are bound by the conditions e.g. the group protesting against the Claimant company.

The Order / The Court Order: the injunction.