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Direct-action protest – do you need to consider injunctive relief?

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There has been a notable increase in direct-action protest in recent years, with protestors gravitating around a wide range of causes including environmental concerns, animal rights and concern for the ongoing situation in the Middle East. Whilst some protest movements have conducted marches and sought to disrupt city centres and road networks, other protests have been more targeted. In particular, there has been a notable increase in direct action tactics such as property damage and trespass on sites associated with or belonging to entities to which the protest movement objects (or against whose activities the protest movement objects). The commercial premises of several high-profile businesses have experienced significant damage in such incidents, with the smashing of windows, extensive graffitiing and even the occupation of buildings becoming common tactics.

This emerging trend begs the question: who is likely to be the target of direct-action, and are you and your clients ready? The targets of direct action are no longer just the entities who conduct activities or who are engaged industries to which the protest movements object – whether that be oil, pharmaceuticals, defence component manufacturing or something else. Rather, protest movements have adopted an increasing trend of targeting those who supply goods and services to those entities. Such targets have included insurers, accountants, providers of financial services, logistics service providers and lawyers. The rationale behind targeting suppliers is to put pressure on the suppliers to sever their commercial relationships with the primary target of the protest movement, causing disruption to the primary target and its business and operations.

Local authorities have also found themselves at the centre of the protest sphere. Some have felt compelled to seek injunctive relief in the discharge of their public functions, including in their capacities as a local highway authority. Others have found themselves as the targets of protest movements by reason of their associations with entities to which protest movements object (with those associations including pension fund investments in companies operating in the defence sector).

Therefore, the category of likely targets of direct-action protest is wider than it first appears. Businesses may need to consider the identities and activities of those to whom they are providing goods and services and, when conducting risk analysis, consider whether those commercial relationship expose their business to the possibility of direct-action protest. So, what can you and your clients do to prepare for the possibility of direct-action protest?

First, an important distinction must be drawn between those protests which are lawful and peaceful, and those which cross the line into unlawful direct-action. Only in response to the latter category will the law assist with a remedy. In the first instance, businesses and local authorities should consider their own on-site security arrangements, as the court will expect a reasonable attempt at self-help and mitigation of harm. As a last resort, an application for injunctive relief could be considered where there is an apprehension of imminent unlawful direct-action and resulting harm. Where the claimant is a local authority, recourse can be had to specific statutory provisions if the claim is brought in the discharge of its public functions (including in its capacity as the local highway authority). It will often be the case that the identities of potential perpetrators of the direct-action are unknown; in those circumstances, the court has an exceptional jurisdiction, in certain circumstances and subject to rigorous safeguards, to grant injunctive relief against Persons Unknown to restrain unlawful acts of direct-action protest.

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