

High Court considers defence to harassment claim

In *Cheshire West and Chester Council and others v Pickthall* [2015] the High Court considered whether to grant an interim injunction under section the Protection from Harassment Act 1997 (PHA 1997).

Relevant sections of the PHA 1997 provide 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;

A victim of harassment can bring a claim for damages for any resulting anxiety and financial loss (section 3(2)). Harassment is not specifically defined under the PHA 1997, but it provides that "references to harassing a person include alarming the person or causing the person distress" (section 7(2)).

Since 2010, the claimants (members of Cheshire West and Chester Council) had been subjected to an extensive number of allegations of criminal and dishonest behaviour by the defendant (a member of the public living within the council's area), which took the form of a large amount of correspondence, as well as the publication of a website that presented the allegations.

The judge in the case granted an interim injunction under section 3(3)(a) of the PHA 1997 to restrain the defendant from continuing to harass the claimants. In granting the injunction, the judge rejected the defendant's argument that the defence in section 1(3)(a) of the PHA 1997, as interpreted in *Hayes v Willoughby* [2013] applied. Section 1(3)(a) provides a defence if it can be proven that the harassment was pursued for the purpose of preventing or detecting crime. In *Hayes*, the Supreme Court held that the application of section 1(3)(a) would be controlled by the public law concept of rationality. By comparison with reasonableness, rationality applied a minimum objective standard to the relevant person's mental processes. The judge confirmed in this case that the "test of rationality is not the same as a test of reasonableness". He stated that it is a less demanding test that simply requires "the defendant to have undertaken the necessary thought process in good faith to form the stated purpose".

However, the judge considered that the defendant's evidence was inadequate and proved no criminal conduct of the claimants. The defendant had no real prospect of justifying the harassment by using the section 1(3)(a) defence.