

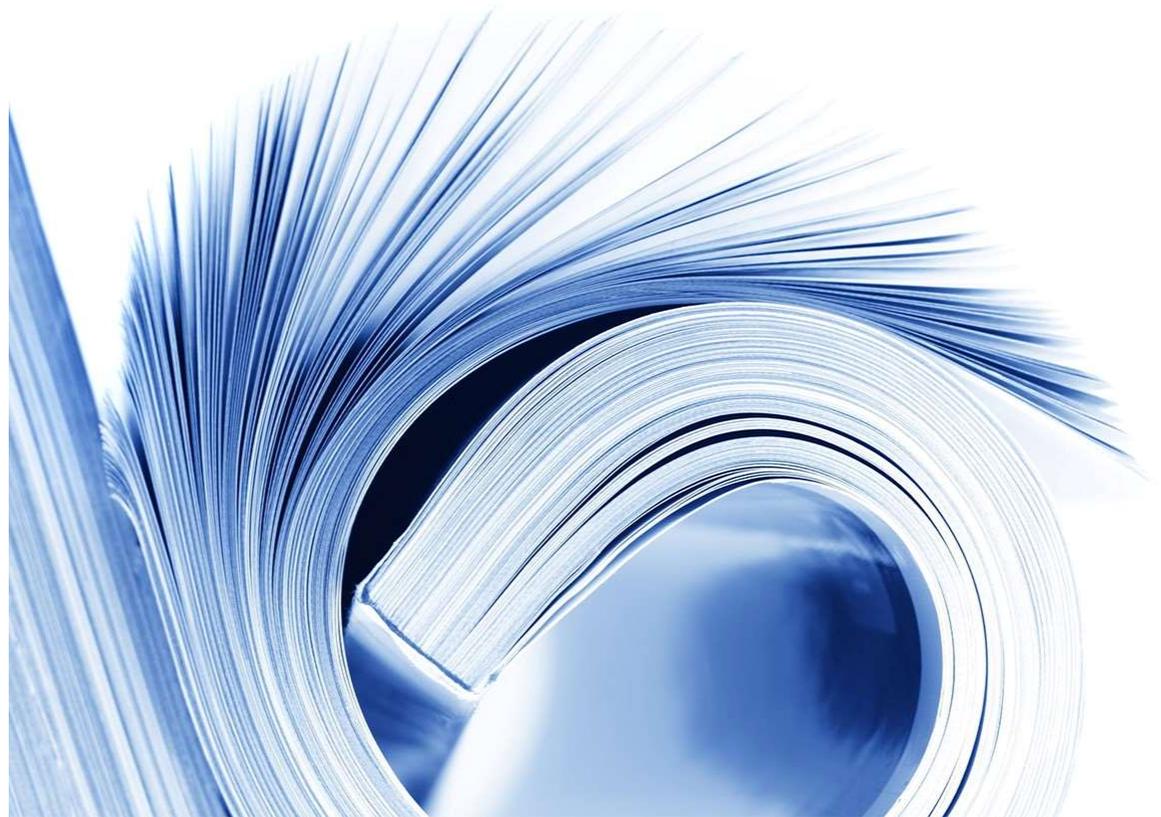
EVERSHEDS
SUTHERLAND

White Paper Conference

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What are the unresolved issues – both legal and practical – for mounting alternative, non-strike protests and wildcat action?

- What's happening?
- Why is it happening?
- What are the issues?



What was happening?

Structured, rules based approach

Traditional role of unions:

- improving conditions through collective action
- securing legitimacy (social partnership)

Resulting behaviours:

- hierarchical; professional; membership focused

Role under challenge:

- fragmentation of workplace relationships
- constraints on taking industrial action



New unions: new approaches

"unions have lost their way, and function more to control workers than advance their interests"



What's happening now?

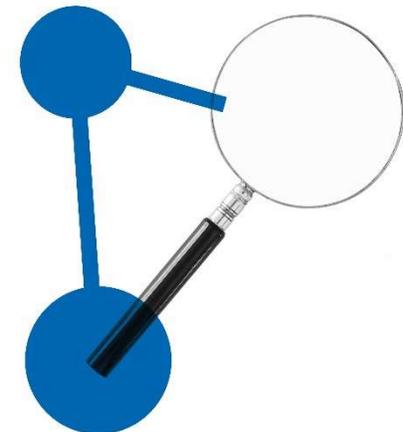
From collective action to connective action

New networks, new unions:

- raising labour standards through reputational damage
- less focus on relationships

Resulting behaviours:

- no hierarchy or membership focus
- use protest and social media
- focus on moral issues (eg London Living Wage)



A case study: OUR Walmart

(with thanks to Alex J Wood)

A new approach

- Development of Worker Centres
- OUR Walmart: union supported
- Black Friday 2013: “swarming”
- No demand for collective bargaining
- Result: pay rises; new stores blocked; NMW raised



OUR Walmart

Lessons learned

Building an effective campaign needs:

- an understanding of Mobilisation Theory
- an orchestrator
- effective initial organising
- effective social media networking
- careful positioning of the union's role



UK: #FFS410

Strikes, solidarity actions and protest

A "convergence of struggles.."

- BFAWU members at McDonald's, TGI Fridays and Wetherspoons on strike over pay
- IWW Couriers Network members at Uber Eats and Deliveroo refusing to log on
- Rallies, Solidarity Actions and Facebook events
- #SpoonStrike

Lessons being learned: Uber

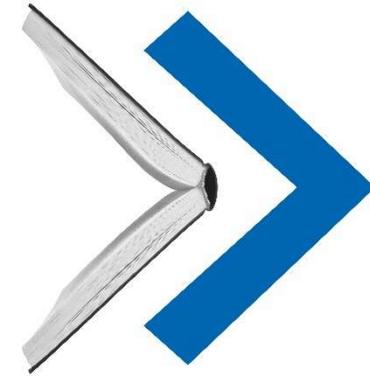


Spontaneous strikes on 19/20/21 September:

- *"The strike and that protest were spontaneous. There were many WhatsApp groups, divided into nationalities and areas, but there was no coordination, so, it was quite chaotic. On the next day, Friday, only 50 drivers went to protest in front of Uber main office. By the evening all pickets were gone. On Saturday, everyone was already back at work, angry and frustrated"*
- *"...the strikes were disorganised. Many drivers didn't join....there was no one to represent them, no one to talk to the press.."*

[Anarchist Federation]

Lessons being applied: #FFS410



Preparation for 4 October

- *"...some drivers and activists started to organise. The Industrial Workers of the World took the lead and is now organising a national strike of couriers on the 4th of October! The IWW's form of syndicalism allows it to work with non members.."*
- *"Most of the organisation is still done through WhatsApp, but now things are better organised. It isn't just a bunch of loose groups. There is a connection between all of them, even at the national level. The strike is not only of UberEat drivers, but also of Deliveroo drivers."*

[Anarchist Federation]

Wildcat: What about the law?

A view from the Anarchist Federation



Back to the 1980s?

- *“Trade Union law is not applicable to “independent contractor” gig workers, meaning that a prohibited repertoire of highly effective tactics that have been banned since the 1980s are now significantly easier to pull off. Solidarity strikes, secondary picketing and flying pickets are firmly back on the table. This first co-ordinated strike will be a chance to see these in action.”*

Assuming there is a breach of contract

Key points for unions

Key points:

- s.244: definition of a trade dispute
- s.296: definition of worker
- s.219: immunity for individuals
- s.219: immunity for unions?
- s.235: wide definition of employment/employer
- s.233: precipitate action renders ballot unlawful



Assuming striking contractors are not workers..

...then there is no trade dispute defence

If not workers then:

- Strike unlikely to be a breach of contract
- But no right to picket
- Article 11 rights?
- Non industrial torts

But if there is a breach of contract then:

- No s.219 immunity for the union
- No s. 219 immunity for individuals inducing others
- Potential injunction

Further factors

- Employer's ability to establish a claim
- Employer's willingness to pursue a claim
- Picketing/Protest: secondary action?
- See issues raised in Bruce Carr's Report

Picketing vs Protest: quick recap

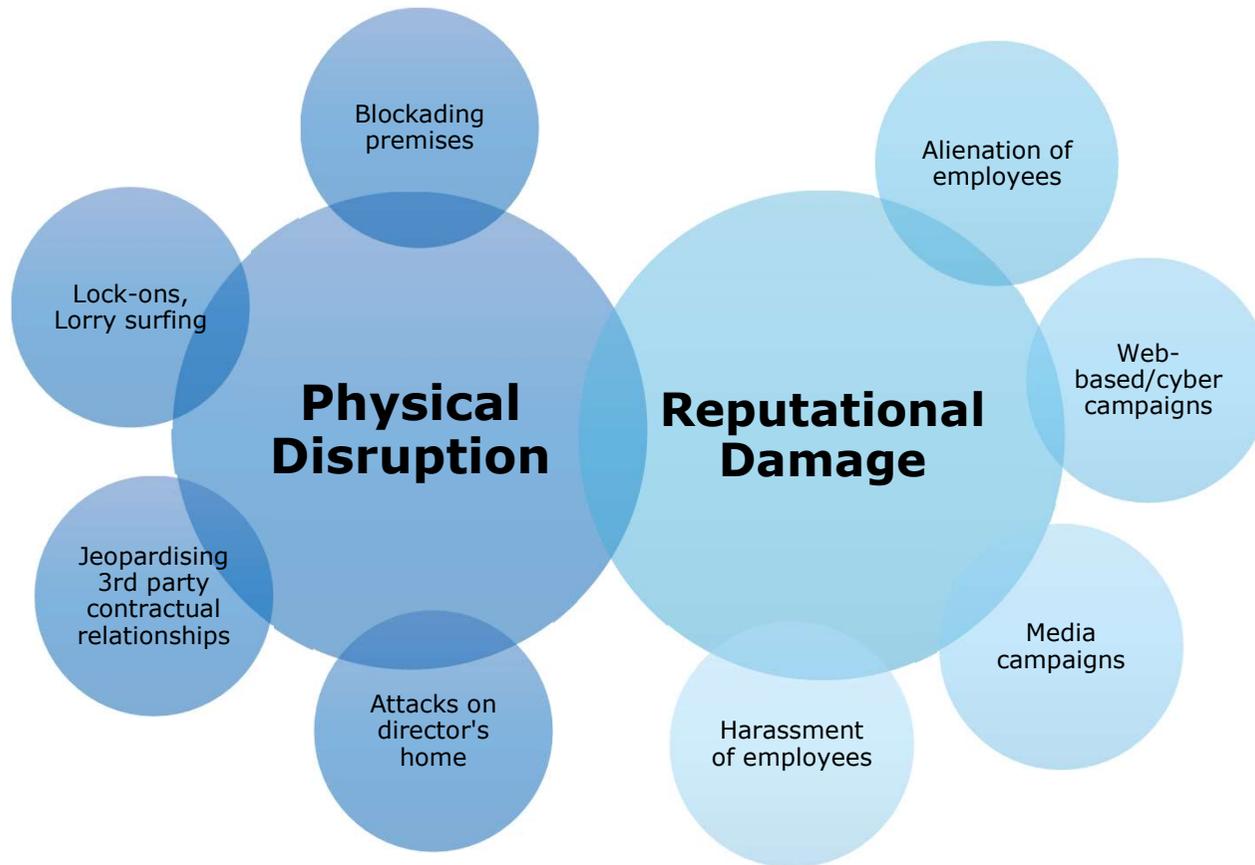
Picketing	Protest
Limited: strike, workplace, employees	Anytime, anywhere, anyone
Code of Practice	Human rights (A5,8,10,11)
1992 Act	Common law principles
Gate Gourmet v TGWU	TCS v United Voices of the World

Alinsky's Rules: why protest works

- Power is not only what you have but what the enemy thinks you have
- Make the enemy live up to their own book of rules
- Ridicule is man's most potent weapon
- A good tactic is one that your people enjoy
- The threat is usually more terrifying than the thing itself
- Maintain a constant pressure on the opposition



Overview: tactics deployed

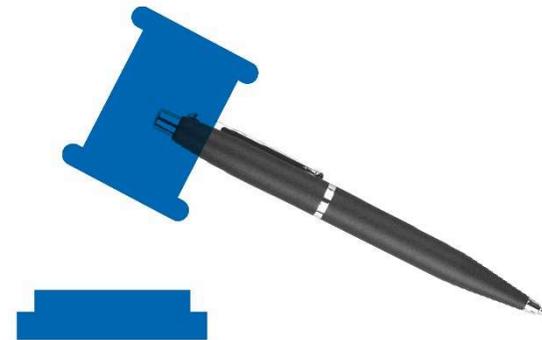


Protests and the law: IR context

Trespass, Harassment, Obstructing the highway, Human Rights

Some cases:

- TCS Services v United Voices of the World
- Ineos Upstream Limited and others v Persons Unknown
- Sheffield City Council v Fairhall and others
- News Group Newspapers v Sogat '82



Protest: recent challenges

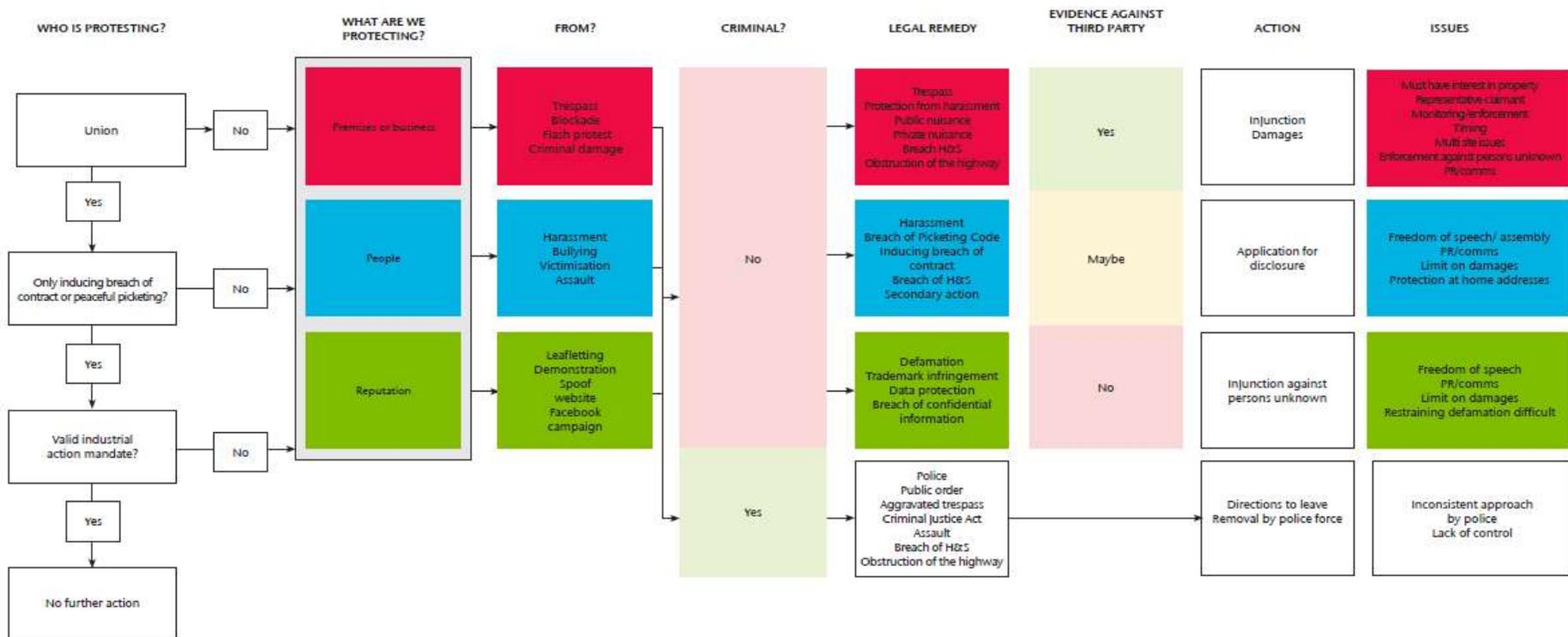
(with thanks to Professor David Mead)

Some themes:

- Catt: narrow view of Article 8 privacy
- Ineos: narrow view of Article 11 freedom of assembly
- Harvey Nichols: privatisation of public space
- Police: “Adapting to Protest” and “Pay to Protest”
- Surveillance

Employers: Understanding the legal options

Protest: responses



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