

Shared Insights: Dealing with protesters on NHS premises

Luke is a barrister at Browne Jacobson and provides advice, drafting and advocacy spanning criminal regulatory, coronial and associated civil matters. He works closely with NHS and public bodies throughout the lifetime of a case.

He was joined by Kathryn Fearn, Associate Director of Legal Services at University Hospitals of Derby and Burton NHS Foundation Trust (UHDB).

Kathryn and Luke spoke about their experience dealing with anti-Covid protesters at UHDB. They emphasised the importance of Trusts developing a written plan so that you are ready to act quickly if anti-Covid or anti-vaccination protesters come on to your site to protest. Browne Jacobson recently assisted UHDB to deal with protesters on site and develop a plan to be followed if they return to site.

The key insights were:

Criminal law - Use the police

The police can exercise powers under the [Coronavirus Regulations](#) on the basis that protesters are a gathering and they are not in compliance with restrictions or attending to avoid a breach of the peace. Trusts should have a conversation at an early stage with local police and the Trust's security team about the powers the police can invoke under the [Coronavirus Regulations](#) and make sure the police are aware of those.

Criminal law - the offence of "causing a nuisance or disturbance on NHS premises"

The [Criminal Justice and Immigration Act 2008](#), s.119 creates an offence of "causing a nuisance or disturbance on NHS premises" with a maximum sentence on summary conviction of a £1,000 fine. Section 120 gives a power to remove from the site (this is the power under which Trust security are operating).

Civil law - [Protection from Harassment Act 1997](#)

This requires a "course of conduct" aimed at a "victim" - i.e. one person being harassed on more than one occasion. It can therefore be difficult to use this legislation to deal with protesters unless you can establish that the protest is directed at a specific person.

Civil law - Trespass

This is the most likely civil remedy, applying [Hillingdon Borough Council v Various Defendants \[2020\] EWHC 2153](#). This is on the basis that no one has unfettered access to NHS Trusts' sites and whilst the Trust gives an implied licence to people to come onto the site for medical treatment that does not extend to protesting. So the licence is withdrawn, entering the site becomes trespass and an injunction can be granted. In this scenario you do not necessarily need to identify an individual (although it helps) and can cover multiple sites. However, this has to be carefully balanced against protesters' right to protest under [Article 10/11 European Convention on Human Rights](#).

Judges will want to see everything has been done first before granting an injunction against protesters. For example:

- **Signage** to make it clear that the implied licence has been withdrawn and there is no right to protest on site.
- **Letter before action** which can be distributed to protesters to make this clear and warn of costs consequences - injunctions can be expensive

If a Trust decides to seek a civil injunction, you will need to gather evidence:

- If protesters attend on site, make sure you get **witness evidence as quickly as possible**, get names and addresses for statements.
- **Preserve CCTV footage and body cam footage** from security team.
- You may also consider putting **public comms out with an email address for members of public** to write to saying what they witnessed and how it made them feel.