

JUDGMENT : His Honour Judge John Toulmin CMG QC : TCC. 21st December 2005.

1. These are two claims which are being heard together. The first is a claim by Mr Small, the owner of 92 Laurel Way, N20, (the property) against Mr Martin arising out of a contract for refurbishment of the property in May 2003. Mr Martin left the site in February 2004 with the work not completed.
2. The second claim is by Mr Martin against Mr Small and Mr Fenton for harassment. This claim was started in the Queens Bench Division and was transferred to this court by order of Jack J. The events followed the breakdown in the relationship between Mr Small and Mr Martin. Mr Martin claims that Mr Small and Mr Fenton at Mr Small's instigation initiated a series of telephone calls and text messages which amounted to harassment under the terms of the Protection from Harassment Act 1997. Mr Martin claims damages in respect of the alleged harassment. He says that it caused him and his family such distress that they were forced for a short time to have round the clock protection.
3. Mr Small denies the claim for harassment and says that he did not act in concert with Mr Fenton. Mr Fenton admits making a number of telephone calls and leaving various messages on Mr Martin's answer phone but says that he did not do so in concert with Mr Small but on his own initiative because he thought that this would curry favour with Mr Small. He denies that his conduct amounts to harassment.
4. Because harassment under the Protection from Harassment Act 1997 is both a crime and a civil wrong, Mr Martin and Mr Fenton were warned before they gave oral evidence that they did not need to answer questions which might incriminate them. Both answered all the questions which they were asked.
5. The experts had the difficult task of disentangling the money claims relating to the building contract. It is to their credit that they have been able to agree the costs of completing the work and repairing the defective work at £40,000. Their task and mine has been made more difficult by the fact that the work was largely paid for in cash and neither Mr Martin, nor Mr Byfield who was generally his representative on site, kept any proper books or records. All that has been disclosed is a diary in which Mr Byfield recorded payments out and payments received relating to the contract.

THE WITNESSES

6. Mr Small, Mr Fenton and Mr Martin all gave evidence. In the building claim Mr Martin was supported by the evidence of Mr Byfield, Mr Hird and Mr Vernazza. Mr Byfield is a qualified plumber with 25 years experience in the building trade. He was the person who largely supervised the work on the house. Mr Hird worked on site as a general foreman. Although he has no formal qualifications he has worked for 20 years as a plasterer and a carpenter. Mr Vernazza is a qualified tiler.
7. I will make findings of fact in relation to each of the issues in dispute. At this stage I have to comment that in relation to the evidence in both actions I was not at various times satisfied that Mr Small, Mr Fenton, Mr Martin or Mr Byfield were giving evidence which I am able to accept.
8. It is convenient to deal first with the building claim and then after with the harassment claim.

THE BUILDING CLAIM: A SUMMARY

9. 92 Laurel Way is a detached house in a residential area within the London Borough of Barnet. In about July 2002 Mr Small embarked on the renovation of his house. He employed another builder. Work commenced in December 2002. The cost of the works was to be £118,672.83 plus VAT.
10. Unfortunately there were problems with the contract and the original builder left the site. In May 2003 Mr Small wrote to Mr Martin to see if he would be prepared to complete the unfinished work and enclosed a two page schedule of works. On 19 May 2003 Mr Small and Mr Martin met on site. There were further discussions and on 23 May 2003 Mr Martin sent Mr Small the following email: *"I refer to our recent meetings and would confirm that, as discussed, our quotation for this job is £75,000. Such figure is calculated upon the attached schedule. Any variances will have to be priced separately at the time. Within the figure is a £5,000 contingency towards the cost of any unforeseen works. Should this not be utilised it will be deducted from our final settlement."*
11. Mr Small responded on 27 May 2003: *"Please see the attached amendments that need to be agreed. Also I need you to agree the cost for the attached work will be ?70,000 and that a sum of ?5,000 is put in for extras if needs so ... Also it is agreed that you will deal with the local District Surveyor and building control officers ..."*

12. There were then emails passing between the parties in relation to the works to be carried out which would have been relevant if the experts had not been able to agree a number of contentious matters.
13. It is common ground that the agreement makes no mention of a time within which the works were to be completed. Mr Small contends that the work should have been completed within six months, ie by early December 2003 and that he was promised informally that this would happen and he acted on the promise. Mr Small also contends that the works were in part defective although the main thrust of the complaint is that the work was not completed when Mr Martin left the site in February 2004.
14. Mr Martin agrees that there was no agreement as to the time when the work should have been completed and he says that a reasonable time for completion of the works would have been within 12 months, ie by June 2004. He further contends that he would have been able to complete the works on time by June 2004 if he had been given a reasonable opportunity to do so. Mr Martin claims that Mr Small behaved in such a way that it would have been impossible for Mr Martin to return to site and in any event in an email dated 11 March 2004, sent to Mr Martin's solicitors, Mr Small said that he would not allow Mr Martin back on site and was about to commence proceedings.
15. There was originally an issue relating to which party was responsible for obtaining building consent but as the hearing of the evidence has proceeded this has ceased to be an important issue in the case. There was also an argument relating to whether this was an entire contract or a lump sum contract.
16. There are three main issues which I have to resolve:
 - i Was a reasonable time for completion of the contract six months or 12 months or some other time?
 - ii If the original period for completion to be implied under the contract is six months was time extended by agreement and if so to what date?
 - iii Mr Martin (but not Mr Small) has pleaded repudiation. Did Mr Small's conduct give rise to grounds for Mr Martin to treat the building contract as discharged as a result of Mr Small's breach of contract? Under this head Mr Martin relies both on Mr Small's refusal to let him and his workmen back into the premises and on Mr Small's alleged behaviour on his own and, as Mr Martin claims, in concert with Mr Fenton, which he says prevented him from returning. In these circumstances Mr Martin argues that he is discharged from performance under the contract.
17. There is a separate claim by Mr Martin against Mr Fenton that he induced a breach of contract between Mr Martin and Mr Small or alternatively interfered in their business relations. There is also a claim against Mr Fenton for a contribution. I shall deal with these aspects of the case when I consider separately the issues of harassment.

THE BUILDING CLAIM: THE FACTS

18. In July 2002 Mr Small embarked on his extensive renovation of the house. Work on the project by another builder started in December 2002. There were problems and the builders stopped work in about March/April 2003.
19. Mr Small approached Mr Martin to complete the work in the circumstances which I have already described and on 27 May 2003 Mr Small sent his amended schedule and said that the cost of the work should be £70,000 with a sum of £5,000 to be put in for extras if needed.
20. On 6 June 2003 Mr Small and Mr Martin signed the schedule of works. There was a meeting with the structural engineer Mr Locke after which on 12 June 2003 the price for the additional structural work was agreed at £3,850. Mr Small paid this sum on 16 June 2003.
21. As I have already said there is nothing in writing about time for completion of the contract. Mr Martin says that he should have been allowed 12 months. He is clear in his evidence that no time was agreed.
22. Mr Small says that on the contrary he asked Mr Martin how long it would take to complete the work. He says that the family had to move out of the house while the work was being completed. Mr Martin told him that it would not take longer than six months and that Mr Small and his family would be back in the house by Christmas. This was important to Mr Small because he had to arrange rented accommodation for himself, his wife and very young children and the house which they were renting was required by the owners in January 2004.

23. On this issue I prefer Mr Small's evidence. I find that the conversation did take place and that Mr Martin did say that Mr Small would be able to move back into the house by Christmas.
24. Work commenced on site around 19 June 2003. Mr Martin said in evidence that he was on site regularly two or three times a week. I find that this is an exaggeration. He visited the site from time to time but the work was done with Mr Byfield acting effectively as sub-contractor with assistance from Mr Hird who acted as foreman on site.
25. Unfortunately neither Mr Martin nor Mr Byfield kept any proper records of the work which was being carried out and Mr Martin was largely paid in cash by Mr Small. There were some rudimentary records kept by Mr Byfield until November 2003 which indicate who was working on site and when but no such records after November 2003. It is suggested that further records were left on site but that neither Mr Martin nor Mr Byfield or their solicitors dared to try to obtain them. I am not prepared to accept that there were such further records.
26. On 24 September 2003 Mr Small signed an extension to his tenancy agreement to 4 December 2003. He says that this was agreed in August 2003 around the time of the formal commencement date of 4 August 2003. I accept his evidence on this point. He also said that this would cover the time until the family expected to be able to move back into the property. Again I accept this. Mr Small obtained a further short extension of the tenancy to 18 December 2003, a date which within a day coincided with the six month anniversary of the start of the work.
27. A further indication that the work was expected to be finished by Christmas 2003 was the evidence which Mr Small gave, and which again I accept, that the new kitchen was ordered in October so that it could be delivered and installed in time for Christmas. Mr Small told me that as a result of delays from the builders the kitchen was not ready for the units to be installed at the time that was originally planned and that he lost his place in the schedule for fitting which meant delays into the New Year.
28. In September 2003 the roofing tiles and the bathroom fittings were also ordered. I am satisfied that this is consistent with the common intention that the works should be completed by Christmas 2003. I reject Mr Byfield's suggestion that they were not necessarily for use in the immediate future.
29. On 6 June 2003 Mr Martin was paid a cheque for ?5,000 by Mr Small. He was paid a further cheque for £3,850 to cover the additional structural works and a cheque for £1,040 on 27 October 2003. Otherwise by the end of November 2003 Mr Small had paid a further £65,000 with a further £5,000 in cash on 5 December 2003 making a total to that date excluding the £3,850 of £76,040. There was a further payment of £5,000 on 16 January 2004 making a total (including the £3,850) of £84,090.
30. The serious problem faced by Mr Martin and Mr Byfield was that they had under priced the work. This meant that by early November 2003 they had run out of money for this job. I note in Mr Byfield's book entry for the week beginning 3 November 2003 that £70,028 had been paid out in wages and materials by 30 October 2003. Further money had to come out of their own resources or they had to finance the work either from past profitable jobs elsewhere or from other jobs which they had to undertake before completing this job in the hope that the other jobs would make sufficient profits to finance the sums needed in order to complete this job.
31. The problem was not caused by Mr Small's request for substantial extras. Mr Byfield's scrappy note dated December 2003 indicates extras of £1,250 for electrical works, plus £1,012 for roofing and a maximum of about £1,000 for additional tiling.
32. There is a sheet in Mr Byfield's book claiming extras in the sum of £7,197 but no-one has attempted to reconcile this with the other figures.
33. There are no contemporaneous records as to what work was done after the end of November 2003 but there is a sheet written up by Mr Byfield some time after the event which is not accurate.
34. Mr Small says that he met Mr Byfield on 4 December 2003 and Mr Byfield agreed to complete the work so that the family could move into the house by 30 January 2004. This is denied by Mr Byfield. On balance I accept Mr Small's evidence on this point.

35. Mr Small moved back into the house on 16 December 2003. He says that the ground floor and the first floor were not finished. Certainly the family did not regard the house as habitable because his wife and children moved in with his mother-in-law rather than back into the house. Mr Byfield says that Mr Small asked him to complete the work on the top two floors by December so that he could move in. Mr Byfield says that the work on these floors was complete. It is clear from the various schedules that the work had not been completed.
36. Mr Small says that little work was done in December 2003 or before matters came to a head in January 2004. Mr Vernazza gave evidence that he did extensive internal tiling work in December 2003 before he went on an extended winter holiday. He said that only the kitchen floor remained to be tiled. In general I accept his evidence. However Mr Small's agenda for the meeting with the buildings on 27 January 2004 shows that some tiling still needed to be done and that the toilet in the master bathroom could not be tiled on one side. I conclude from that that the work had not been completed.
37. Although Mr Byfield realised that the project had run out of money in November 2003, he says that he did not tell Mr Martin until January 2004. Before that time Mr Martin says that he did not realise what the financial position was. This sounds surprising, but in view of the fact that Mr Martin exaggerated the extent to which he was involved in the project on a day to day basis, I am inclined to believe it.
38. In January 2004 Mr Small informed Mr Martin of the position and Mr Small arranged a meeting with Mr Martin and Mr Byfield on 27 January 2004. Mr Small prepared a schedule of items to be discussed. He was clearly annoyed that the work had not been completed and, as he said, no-one had been at the house from about 16 December 2003. Although this is to some extent disputed by Mr Byfield, I accept that little or no work had been done on site after the Christmas break.
39. The items which Mr Small set out in his schedule and said needed to be dealt with included a number of items where the work had been done but in his view had not been done properly, eg shower leaking water,?? no pressure in the shower when jets were on; and other items which were not in accordance with the specification, eg top floor toilet in wrong position.
40. Mr Byfield attended the meeting on 27 January 2004. Mr Martin did not attend or send his apologies or any explanation for his absence. In evidence he told me that he did not attend because he was needed at home. Mr Small was very annoyed at Mr Martin's behaviour. Mr Byfield agreed at the meeting to carry out the work needed to complete the contract.
41. An indication of the frustration which Mr Small felt is to be seen in his email to Mr Martin dated 5 February 2004 entitled "*last time going to ask*" in which he asked for the shower in his bathroom to be fixed properly. The email ended: "*I am sick of asking people for this and not getting it sorted out*".
42. On 10 February 2004 Mr Small and Mr Martin met. Mr Martin said that apart from doing some limited work to the outside of the house and to the boiler they would leave the job for a month. Mr Martin put it in his email on the following day as follows: "*Once we return we will have the entire team at the house full time and fully supervised to ensure that the remaining works are carried out to a satisfactory standard and that they are completed promptly.*"
43. In the email Mr Martin also said that Mr Byfield had told him that out of the £5,000 which Mr Small had given Mr Byfield in cash in January 2004, £2,500 remained and this would be used to pay for money due to the electrician, the tiler and the plumber. Mr Martin said that Mr Small would have to pay the tiler direct for the floor tiling in the kitchen and to fund other work and materials as the work progressed when the workmen came back on site. Mr Martin said in oral evidence that all this money would be repaid when the work was completed.
44. Mr Small responded to the email immediately on the same day, 11 February 2004. This email is relied on by Mr Martin in his harassment claim. I shall deal with harassment as a separate narrative when the events can be placed in the context of the building dispute.
45. Mr Small's immediate response was to say that he was "*totally not in agreement with Mr Martin's proposal*". He said that he had already paid £70,000 in respect of the contract and £19,670 in respect of extras, this is

about £5,000 more than appears from Mr Byfield's figure and I have no means of reconciling the two figures but it may in the event not be of any great consequence.

46. Mr Small said that Mr Martin had agreed at the meeting on the previous day that the work to date was not satisfactory and that there were many issues which needed resolving. His frame of mind is apparent from the following: *"You have caused myself and my family endless grief and upheaval in respect of this property and so much so because the house is still unliveable. We have been forced to take on renting a property again until the work is finished. Should I commence legal proceedings against you I will hold YOU responsible for the inconvenience, the extra costs in getting the contract finished to a standard, compensation and finally damages."*
47. Mr Small said he was not accepting Mr Martin's wish to pull off the job for four weeks when he had said only the day before that he would need only three weeks.
48. With regard to the payments referred to in Mr Martin's email, Mr Small agreed to pay Mr Vernazza an additional £250 for tiling the ground floor but otherwise the payments to him, the roofer and the electrician would have to come out of the additional £5,000 which Mr Small had paid.
49. On 17 February 2004 Mr Small met with Mr Martin, Mr Hird and the District Surveyor. Mr Martin again said that he would pull off the job for four weeks.
50. In acknowledgment of the fact that the house was not ready for his family to move back in, Mr Small entered into another short tenancy for three months to 12 May 2004.
51. Mr Small then instructed Mr Wallis, Mr Small's expert in this litigation, to prepare a schedule of works to be completed under the contract. This schedule was prepared on 2 March 2004 and was sent to Mr Martin.
52. On 2 March 2004 Mr Small attempted to telephone Mr Martin. Mr Martin did not return his telephone call. Mr Martin says that he and Mr Small did meet and Mr Small was threatening. This conversation constitutes the first alleged incident in Mr Martin's harassment claim.
53. Mr Small certainly sent the email of 3 March 2004 complaining that Mr Martin had not returned his telephone call. In this email apart from matters relevant to the harassment claim he said: *"I am putting you on notice that should work not commence at 92 Laurel Way, N20 HHU on Monday 8 March 2004 by 8 am to the specification as attached in this email, I will hold you in breach of contract and instruct my lawyers, Linklaters, to seek substantial damages against you ..."*
54. Mr Small and Mr Martin then did have a discussion on the telephone. After this Mr Martin wrote an email on 4 March 2004 setting out details of items in the Quantity Surveyor's report, which he said did not form part of the original agreement. The email ended: *"Let me know your thoughts I am pleased we are finally sorting out this amicably."*
55. Mr Martin explained in evidence that he wrote these words to reduce the temperature between him and Mr Small. He agreed that it represented a triumph of hope over expectation.
56. Mr Small replied to Mr Martin's email on 5 March 2004 setting out the additional items which he said needed to be added to the specification. He ended in civil tones: *"If you are in agreement to the above I will get my solicitors today to draw up an agreement based on what we have discussed. Thanking you."*
57. This email from Mr Small was followed by another one 2? hours later at 12.56 pm: *"Please find attached the guarantee and indemnity that I require before I advance you any sums of money. I have asked my solicitors to draw up the agreement and I will get it over to you either later today or on Monday. Please confirm that your guy's will be there on Monday."*
58. This draft guarantee and indemnity provided that Mr Small would pay £5,000 towards the works. The work would start on 8 March 2004 and would run for 33 days continuously to be completed on 9 April 2004 with a further 14 days to complete work on the outside of the property including snagging. Damages for late completion were to be at the rate of £2,000 per week or part thereof.
59. As Mr Small had suggested, Mr Martin went immediately to see his solicitors. The solicitors responded to Mr Small at 5.59 pm on 5 March 2004: *"We will revert to you by Wednesday of next week (ie 10 March) in*

order to enable us to obtain detailed instructions. If action is taken precipitously we shall refer the court to this email correspondence on the issue of costs."

60. Significantly the email made no mention and gave no assurance that the builders would be back on site on 8 March 2004. Mr Small and Mr Martin spoke on the evening of 5 March 2004 when Mr Small agrees that he told Mr Martin: *"Right I have had enough. Fuck you. See you in court."* He said that this was an expression of exasperation in response to Mr Martin saying that he had received advice from his solicitor not to carry out any further work until the dispute had been resolved.
61. Mr Small responded directly to Mr Martin early on the Saturday morning 6 March 2004. He was obviously extremely annoyed by the solicitor's email which he regarded as stalling tactics. He appears also to have spoken directly to Mr Martin who said that he would not sign the guarantee. In the circumstances he wrote to inform Mr Martin that: *"I have decided to withdraw my offer of part funding the project at 92 Laurel Way and I have instructed my solicitors to instigate proceedings without further notice."*
62. At 8.33 pm on the same evening, 6 March 2004, Mr Small wrote a further email to Mr Martin copied to his solicitors. In it he set out his side of the events since June 2003. Mr Small said that his patience had worn thin and he had no option but to sue Mr Martin. He said that the only way in which he would allow Mr Martin to finish the project would be if Mr Martin financed the project in its entirety. He said that proceedings would be started on the following Monday. It is clear that if there was no amicable agreement and Mr Martin did not go back on site on 8 March 2004 with a clear plan to complete the work, Mr Small regarded his attempt to complete the work using Mr Martin as at an end.
63. Mr Martin and his team did not go back to site on Monday 8 March 2004 nor ever again. Instead Mr Martin's solicitors wrote on the Monday afternoon to tell Mr Small not to correspond direct with Mr Martin. Mr Martin was referred to by the solicitors as *"the client's director"*. Although the claim was subsequently abandoned the solicitors wrote in their email of 5 March 2004 that their client was Alphahill Trading as Saffron Securities with whom Mr Small was in contract and that Mr Martin was acting only as a director of the company.
64. On 10 March 2004 Mr Martin's solicitors responded to the substance of Mr Small's earlier emails in a long email. The email acknowledged that Mr Small had paid £75,000 plus approximately £17,000 for additional work.
65. It also said that Mr Martin offered (on behalf of Alphahill) to pay £7,000 towards the cost of completing the job and Mr Small offered to provide a further £5,000 *"as this is what is outstanding"*. The solicitors continued to assert that the contract for building works was between Alphahill Trading and Mr Small and said that Mr Martin should not sign any guarantee or agree to any charge over his house. The suggestion was described in the email as *"preposterous"*. I have little doubt that the assertion that the contract was with Alphahill rather than Mr Martin would have the effect of increasing Mr Small's annoyance and frustration.
66. The email ended by saying that their client was happy to complete the works on the basis that a suitable agreement was reached. Mr Martin's solicitors suggested a round table discussion should take place between the parties and their representatives.
67. Mr Small responded on 11 March 2004 by saying that: *"Please note that under no circumstances will I let Mr Martin back into my premises to finish the works after his appalling behaviour. He has been given the opportunity to rectify the problem but has insisted on numerous occasions that he has no money to complete the project and the only way he will finish the works is if I pay over further amounts to him this is not going to happen."*
68. Mr Munro for Mr Small says that Mr Martin should have shown firm resolve and insisted on going to the premises and completing the work.
69. On 16 March 2004 Mr Small gave notice that he was prepared to wait another 48 hours to enable the Defendants surveyor to inspect the property otherwise the offer would be deemed to have been waived.
70. It appears in fact that Mr Small entered into an agreement with another firm to start work on 15 March 2004. The agreement was to complete the outstanding works by 28 April 2004 with a further ten days

allowed for snagging. The contract price including the contingency but excluding VAT was in the sum of £40,477.

71. In the Amended Particulars of Claim Mr Small claims that it was an express term of the agreement that Mr Martin would complete the works within the period of six months after 17 May 2003 (paragraph 4). Alternatively by paragraph 5 of the Particulars of Claim he avers that it was an implied term that Mr Martin would complete the works within a reasonable time, ie within a period of six months after 27 May 2003. In paragraph 13 of the Amended Particulars of Claim he contends that Mr Martin failed to complete the works within the six months from 27 May 2003 or within a reasonable time or at all. There is also a claim for defective works. I have found that Mr Martin said that Mr Small would be able to move back in the house by Christmas. This was effectively six months not from when the contract was signed but from when the work commenced. I find that Mr Small organised his affairs accordingly. If Mr Martin had not run out of money on the contract it would indeed have been completed by Christmas. In these circumstances I find that, in any event, a reasonable time for completion of the work was six months from the date of the commencement of the works.
72. I also find that thereafter Mr Small did not waive his rights but without prejudice to them did attempt to find a way forward which would assist Mr Martin and Mr Byfield and enable the work to be completed by them. In the event that it was not possible to reach a new agreement with Mr Martin, I am satisfied that Mr Small suffered loss and damage as a result of Mr Martin's failure to complete the works on time or within a reasonable time.
73. In these circumstances I find for the Claimant. He is entitled to recover the costs of completing the work and repairing the defective work in what is now the agreed sum of £40,000. He is also entitled to recover £5,882.25 in respect of the cost of the additional accommodation and storage and to recover £2,650 overpayment in respect of the flooring, making a total of £48,532.25. The separate claim for removal of rubbish was made too late to be admitted and, in any event, I am not satisfied on the evidence before me that the work was done and the payment was made and was reasonable.

HARASSMENT

74. This claim is made against Mr Small and Mr Fenton under the Protection from Harassment Act 1997 (the Act). Under Section 1: "*1(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 have known amounts to harassment of the other. The test in relation to "know or ought to know" is whether a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other (By Section 1(2)) the burden of proof is upon the party alleging harassment and in civil cases this offence must be proved according to the civil standard ie on the balance of probabilities."*
75. The Act provides an exception under Section 1(3) and in particular under Section 1(3)(c) that in the particular circumstances of the case the conduct was reasonable.
76. The interpretation section of this part of the Act (Section 7) provides that references to harassing a person include alarming a person and causing them distress (Section 7(2)). A course of conduct must involve conduct on at least two occasions (Section 7(3)) and "*conduct*" includes speech.
77. The criminal offence of pursuing a course of conduct prohibited by Section 1 is set out in Section 2 of the Act and a conviction may attract a sentence of imprisonment not exceeding six months and/or a fine.
78. The civil remedy is set out in Section 3. It provides that: "*3.(1) An actual or apprehended breach of Section 1 may be the subject of a claim in civil proceedings by the person who is or may be a victim of the course of conduct in question."*
79. Sub-section 3(2) is imprecise in its application. It provides that: "*On such a claim damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment."*
80. I have had cited to me the following criminal cases, **Law v DPP** [2000] 1 FLR 799, **Baron v CPS** [2000] LTL 13 June 2000, **R v Colohan** [2001] 2 FLR 757 and **Pratt v DPP** (2001) The Times, 22 August 2001. I

note that in **Potter v Price** [2004] EWHC 81, a case heard in the Queen's Bench Division and cited in Clerk and Lindsell on Torts (Nineteenth Edition, paras 15-20) "*that sinister and alarming emails which went beyond the 'acceptably brusque' and anonymous threatening telephone calls, in the course of a dispute about a commercial debt, have been held to constitute harassment*".

81. It is important to bear in mind the cautionary note which Morison J expressed in Baron. He emphasised that the right to free speech requires a broad degree of tolerance in relation to communications. He said: "*It is a legitimate exercise of that right to say things that are unpleasant or possibly hurtful to the recipient.*"
- The 1997 Act does not detract from this right of free speech even if such speech causes the recipient distress. For such speech to amount to harassment it must cross the boundary between what would be regarded as exercising the legitimate right to free speech even if it exhibits anger and frustration, and speech which could properly be regarded as illegitimate, e.g. if it amounted to bullying.
82. In the event that I find that the case of harassment is proved against Mr Small and/or Mr Fenton, I shall have to consider what damages should be awarded.
83. Additionally the claim is made against Mr Fenton that he induced a breach of contract between Mr Small and Mr Martin, or alternatively interfered in their business relations.
84. The genus of the claim is set out in paragraph 25-88 of Clerk & Lindsell on Tort's 19th edition: "*There exists a tort of uncertain ambit which consists in one person using unlawful means with the object and effect of causing damage to another.*"
85. The history and development of the tort is set out in the judgments in **Lonrho v Fayed** [1989] 2 QB 479. The intention to injure is an essential ingredient of the tort.
86. If I conclude that both Mr Small and Mr Fenton are liable to pay damages for harassment I must consider the question of contribution. Section 1 of the Civil Liability (Contribution) Act 1978 provides that where two or more persons are liable to the same claimant for the same damage each may claim contribution towards that liability from the other. The damage in Section 1(1) is the wrong causing the injury not the injury itself.

THE HARASSMENT CLAIMS: A SUMMARY

87. Mr Martin claims that Mr Small and Mr Fenton were acting in concert to harass him and succeeded in doing so with the result that he and his five months pregnant wife and two small children were put in fear of physical harm from Mr Small and Mr Fenton. On 16 March 2004 they were so fearful that Mr Martin made arrangements for security guards to guard the house. The anxiety continued with the further anonymous telephone messages which they learnt subsequently came from Mr Fenton. Mr Martin had to attend the police station and make statements and obtain a court order against Mr Small and after finding out his identity on 16 April 2004, more than five weeks after the series of telephone calls began, also against Mr Fenton.
88. Mr Small says that the incidents in which he was directly involved do not amount to harassment. He has no knowledge of the activities of Mr Fenton. He admits receipt of telephone calls and text messages from Mr Fenton between 11 and 18 March 2004 but he says that they related only to social arrangements being made between them.
89. Mr Fenton says that he was at all times acting on his own without Mr Small's knowledge or consent. He said that he voluntarily gave an undertaking to submit to a permanent injunction in April 2004. He said that making the phone calls was a "*silly thing to do*" and he apologised to Mr Martin and Mr Small in a mediation hearing in August 2005. He says that he acted as he did to curry favour with Mr Small because he wanted to have him as a friend. He also said that he does not believe that the nature of the calls were threatening and says the whole matter has been taken out of context.

THE FACTS

90. The claim against Mr Small must be seen in the context of the surrounding events and the evidence must be understood in that context. It is important to understand that there was a dispute between Mr Small and Mr Martin and that Mr Small and his family with twins aged about 2 were understandably frustrated and annoyed at the way in which the work had progressed. In considering the evidence in

relation to harassment I bear fully in mind the consideration emphasised by Morison J in Baron that it is a legitimate exercise of the right of free speech to say things that are unpleasant or possibly hurtful to the recipient. On the other hand I must also bear in mind that in a course of conduct a series of incidents which taken in isolation may fall within or just outside the right of robust free speech may become part of a course of serious harassment.

91. Mr Small has at all times denied that he has been party to any harassment of Mr Martin. He denies it in relation to the incidents alleged against him personally and he denies having any knowledge of the actions of Mr Fenton.
92. Mr Small says that he met Mr Fenton at the David Lloyd Sports Club where they exercised in the gym. He said on the pleadings that they first met in February 2004 but in evidence although he was uncertain when they first met he said that it was in January 2004. Mr Small said he would fall into conversation with Mr Fenton when they were exercising and that they would meet at the coffee bar or in the reception area and chat. This led to them telephoning each other to ask whether or not they were going to the Centre at a particular time on a particular night so that they could meet. They did not meet outside the sports club.
93. Mr Small said that he and Mr Fenton got into conversation and Mr Small told Mr Fenton that he was having a lot of aggravation with his builders. He said that at first he did not explain the problem to Mr Fenton but later said that the builders had run out of money and had walked off the site. He said in evidence that he thought Mr Fenton asked him who the builder was and when he told him, Mr Fenton said that he did not know him. Mr Fenton's evidence was that while he was having coffee on one occasion he saw that Mr Small had brought in some legal papers and while Mr Small was at the bar buying a coffee Mr Fenton looked at the papers which were open and saw Mr Martin's name and address which he wrote on a scrap of paper and Mr Martin's telephone number which he logged in his portable telephone. He said that he did this without Mr Small's knowledge.
94. Mr Fenton said that he did not tell Mr Small what he had done but thought that if he could get Mr Martin to speak to Mr Small and sort out the problem, that would cement his friendship with Mr Small. He said he did not tell Mr Small what he was going to do. He said he did not know why he did not tell him.
95. In putting this in context it is important to note that the first communication by Mr Fenton to Mr Martin was on Friday 12 March 2004 at 3.07 pm, the day after Mr Small had emailed Mr Martin's solicitors to say that under no circumstances would he let Mr Martin back in the premises because of Mr Martin's appalling behaviour.
96. The evidence in relation to the issue of harassment by Mr Fenton consists not only of emails but also of a detailed analysis of telephone logs. This evidence was obtained later by order of the court. Mr Martin says that I should draw adverse inferences from the timing of messages and telephone calls from Mr Fenton to Mr Martin as well as from Mr Fenton to Mr Small and Mr Small to Mr Martin.
97. The allegations against Mr Small begin 10 days before the allegations against Mr Fenton. On 2 March 2004 Mr Martin alleges that in the course of his telephone call with Mr Small, Mr Small said words to the effect that: *"I have spoken to a couple of boys I use and I am going to see that Stephen Byfield is hospitalised."*
98. Mr Small denies saying this. This allegation is a serious one. Although I adopt the civil standard of proof, I consider this allegation is at the higher end of the balance of probabilities. On that basis, whilst I am prepared to find that Mr Small used language on occasions which was threatening I am not prepared to conclude that on this occasion he made a direct threat that he would send men around to cause Mr Martin and his family physical damage. I am therefore, on balance, not prepared to find that this allegation is proved although I am prepared to find that Mr Small's general tone was aggressive. I note that Mr Martin did not make any immediate complaint that he had been threatened.
99. It is not disputed that Mr Small sent Mr Martin an email on 3 March 2004. The tone and content of this email must be considered in context including the context of an aggressive telephone call on the previous day. The email is as follows:
"Andy

This time you are taking the fucking piss by not returning my phone call.

I am putting you on notice that should work not commence at 92 Laurel Way N20 8HU on Monday 8 March 2004 by 8 am to the specification attached to this email I will hold you in breach of contract and instruct my lawyers Linklaters to seek substantial damages against you for the money that I have paid you, the monies I have paid to secondary contractors, rent, inconvenience, damages and the cost of getting my house to a standard where the contract you agreed to is fulfilled in its entirety. This costs (sic) are estimated in excess of £60,000.

Furthermore as you know the rent of the current property runs out on 9 April 2004 and should work not be finished totally by then by you or another builder I will move with my family into a luxury suite in a hotel until building works have finished and been signed ov (sic) by my surveyor. This cost will be included in my claim against you which will run in thousands of pounds.

I will also make your life a nightmare believe me. You are messing this time with the wrong person

You asked me not to bad mouth you believe me everyone will know what antics you are up to.

You have fucked me around now for four months after promises by you that you will get on and finish the work at the property.

Please take this letter as a final notice.

Should you not comply with the contents a writ will be issued against you personally for damages etc without further notice."

100. In my view, taken in context, this email was intended to alarm and cause distress to Mr Martin. It went beyond robust free speech and amounted to an act of harassment. The seriousness of the harassment depends of course on the context in which it was sent and whether or not it was an isolated or almost isolated incident. In the course of evidence there was a suggestion that the reference to Linklaters amounted on its own to harassment. It was said that this was not pleaded in terms and on that basis I make no specific comment about it.
101. As I have said, I accept that by its tone this email crosses the line between robust free speech and intimidating language. It represents an incident which if taken with other similar incidents is capable of amounting to harassment under the 1997 Act.
102. The third and last alleged incident against Mr Small personally occurred in the course of the telephone call on 5 March 2004 when Mr Small admitted saying to Mr Martin: *"Right I have had enough, fuck you see you in court. I will bankrupt you."*
103. Mr Small admits that he used those words but says that they were used as an expression of exasperation. Mr Martin's version given to the police in his witness statement made on the night of 16/17 March 2004 was that after Mr Martin had said that he had been advised by his solicitor to do no further work until matters were resolved: *"Mr Small became very abusive and told me to forget the whole thing and he would rather go straight to court. Small proceeded to threaten to take me to the cleaners mentioning that once he had won and I couldn't pay he would bankrupt me."*
104. I accept Mr Martin's version of this phone call. It seems to me that this also falls on the wrong side of the line between robust free speech and harassment particularly when taken in the context of the previous admitted telephone call from Mr Small. I have to bear in mind that it would be only just on the wrong side of the line. Taking the two incidents together they would be on the borderline between robust free speech and harassment. On their own I would incline to the view that they were on the wrong side of the line but would be liable to attract, a small or nominal sum in damages for injury to feelings see paragraph 141 below. The real question in relation to Mr Small is whether Mr Small and Mr Fenton were acting in concert in what followed.
105. The following is pieced together with the telephone records which shows that Mr Fenton telephoned Mr Martin from five different telephone numbers.
106. It appears that Mr Small telephoned Mr Fenton briefly on 11 March 2004. He followed this with a text message at 7.07 am on 12 March 2004. Mr Fenton responded immediately. This was followed by three short telephone calls from Mr Fenton to Mr Martin, the last at 2.09 pm. Mr Byfield received a telephone call from Mr Fenton at 3.06 pm. No message was left.

107. Immediately afterwards Mr Fenton telephoned Mr Martin at 3.07 pm and left the following message. Mr Fenton calling himself "Steve" said: *"Message for Mr Martin. I have just bought a debt from a chap called Philip. I'll call back to arrange a meeting. I'll probably call you later this evening."*
108. Mr Fenton agreed in evidence that Philip was intended to refer to Mr Small. Mr Martin said he was so alarmed by this telephone call that he reported the fact to the police.
109. At 5.45 pm on the same day Mr Fenton telephoned Mr Small and talked to him for 1 minute and 45 seconds. A few minutes later Mr Small telephoned Mr Fenton and spoke to him for 31 seconds.
110. On 13 March 2004 Mr Fenton telephoned Mr Martin but did not leave a message.
111. On Sunday 14 March 2004 Mr Fenton attempted to telephone Mr Martin at 3.35 pm. He tried again at 3.39 pm using his mobile telephone no. 07976 427753 and left the following message: *"Hi Mr Martin this is Steve here. I left a message regarding the debt from Phil. I've left a couple of messages on the phone. I am going to visit you at 3 Tate Gardens probably about 7 tomorrow evening unless I hear from you otherwise. My number 07976426673 [this was a wrong number]. I have given Phil a cheque for £40,000 and told him not to cash it until Tuesday. Unless you want to contact Phil yourself and come to an arrangement that money belongs to me now."*
112. Mr Fenton said that the figure of £40,000 was a coincidence and not related to the facts of this case. There is no record of any immediate follow up call by Mr Fenton to Mr Small.
113. On Monday 15 March 2004 Mr Small telephoned Mr Fenton at 2.39 pm. Mr Fenton telephoned Mr Small and 2.47 pm and spoke to him for nearly 3 minutes. At 2.53 pm Mr Fenton telephoned Mr Martin unsuccessfully and immediately afterwards spoke to Mr Small in a conversation lasting 1 minute and 49 seconds. Also on 15 March 2004 Mr Martin consulted his solicitors who sent an email to Mr Small complaining that Mr Martin have received telephone calls from someone who claimed to have bought the debt from Mr Small. The email also said that Mr Martin had received a number of threats and that these matters had been reported to the police. Mr Small did not respond to this email. He said in evidence that he didn't know anything about it and sent the email to his solicitors.
114. At 6.16 pm on Tuesday 16 March 2004 Mr Small telephoned Mr Fenton and spoke to him for just under 4 minutes. At 6.20 pm Mr Fenton telephoned Mr Martin. He telephoned him again 1 minute later and was again unable to make contact.
115. Mr Fenton immediately telephoned Mr Martin back and left the following message: *"Hello Mr Martin, this is Steve again regarding Phil's debt. You haven't contacted him. I suggest you contact him to arrange to pay back that money otherwise you are definitely going to have a visit, either that or will call you round to give an estimate to someone and when your in your place, I mean our place, it will be sorted out then. I suggest you try and contact Philip to try and sort this out amicably otherwise it will get nasty."*
116. Mr Fenton said in evidence that he was posing as a debt collector threatening to make a visit to Mr Martin's home. He was unable to explain what he meant by *"an estimate to someone"*. He said that *"that money"* referred to money owed in relation to the building work. He said that the reference to *"get nasty"* was intended to be a reference to a visit to Mr Martin's house. Once made, the threat to 'get nasty' is the context in which the succeeding messages were made.
117. Mr Martin again informed the police about this telephone call. He said, and one can well understand it, that this call made him feel very apprehensive and worried for the safety not only of himself but also his wife (who was five months pregnant at the time) and his two daughters.
118. Having informed the police he then attended the police station and made a statement outlining how the dispute had arisen and the threats that he had received. Later that day the police attended his house at approximately 8 o'clock in the evening and took a further handwritten statement. On 17 March 2004 (whilst he was in conference with his barrister) Mr Martin received a further telephone message from Mr Fenton which said: *"Mr Martin, its Steve here again, you've got until tomorrow to sort this debt out with Philip otherwise its in my hands then and then you owe me the money and I am not going to stand for it. I want my money back straightaway. I have given Philip £27,000 for a £40,000 debt now you sort it out, you either get in touch with Philip or I will be around to see you tomorrow."*

119. It was put to Mr Fenton that these figures were related to the figures in the dispute between Mr Small and Mr Martin. Mr Fenton said that it was not true.
120. Also on 17 March 2004 Mr Martin started proceedings for an injunction against Mr Small and a person called Steve under the Protection from Harassment Act restraining Mr Small and "Steve" from communicating with Mr Martin or Mr Byfield or any members of their family and from entering Mr Martin's house. This injunction was continued until the hearing on 29 April 2004. It does not appear to have been served until early the following morning, the 18 March 2004.
121. At 7.59 am on 18 March 2004 Mr Fenton left the following message on Mr Martin's answer phone: *"It is your last day Mr Martin for contacting Philip. That's all I have got to say to you."*
122. At 9.15 am on 18 March 2004 the injunction was served on Mr Small but not on Mr Fenton. The anonymous messages had not yet been traced to him. Mr Small attended court on 19 March 2004 and the injunction against him was continued.
123. At 12.23 pm on the same day Mr Fenton sent the following message to Mr Martin: *"Mr Martin this has got nothing to do with Philip any more. I am going to come and visit you and I am owed some money. I am not like Philip who can wait for it. I don't know when I am going to see you but I know where you live and I will be round to see you. It may not be today. It may be tomorrow but I will be round to see you."*
124. Mr Martin asked me to draw the inference that the change of direction occurred after Mr Small had been served with the injunction and had communicated the fact to Mr Fenton.
125. It was at this time that Mr Martin was so frightened that he had hired 24 hour security. Part of the reason for this may have related to a phone call from an unknown person on 16 March 2004 which cannot be traced to Mr Fenton. Nevertheless I am satisfied on the basis of the phone messages which were admitted to having been left on Mr Martin's answer phone that he was fully justified in any event in taking such action and that the fear engendered by these phone calls for himself and his family was entirely genuine.
126. At 3.55 pm on 18 March 2004 Mr Small telephoned Mr Fenton. The duration of the telephone calls was 22 seconds.
127. On 20 March 2004 Mr Small was interviewed by the police and was arrested but was subsequently released without charge. He said that he had no knowledge of a man called "Steve" who was allegedly demanding money from Mr Martin having supposedly bought Mr Martin's debt from Mr Small.
128. There was apparently no communication by telephone between Mr Small and Mr Fenton between Thursday 18 March 2004 and Tuesday 23 March 2004 apart from a text message sent by Mr Fenton to Mr Small on 22 March 2004.
129. On 23 March 2004 at 8.32 pm Mr Martin received a telephone call on his mobile phone from Mr Fenton who left the following message: *"I haven't forgotten about you Martin."* Mr Fenton says that he does not remember making the telephone call. I find that he did make the telephone call.
130. On 26 March 2004 at 6.14 am Mr Martin says that he received a telephone message from Mr Fenton saying: *"Yeh Mr Martin I haven't forgotten about you mate"*. This telephone call is not admitted by Mr Fenton whose evidence is that he did not make a telephone call to Mr Martin on that date. I prefer Mr Martin's evidence and find that the telephone call was made.
131. On 28 March 2004 at 6 pm Mr Martin says that he received a telephone call from Mr Fenton saying words to the effect: *"We are coming in a few days"*. This telephone call is denied by Mr Fenton. I find that the telephone call did take place.
132. It appears that the telephone communication between Mr Small and Mr Fenton had become much less frequent after 18 March 2004. No explanation was given in relation to this. In the following 12 days there appear to have been two text messages and a brief telephone call on 30 March 2004 from Mr Fenton to Mr Small.

133. It was only after Mr Martin's solicitors had obtained the requisite orders on 31 March 2004 and 2 April 2004 that they were able to start to establish that Mr Fenton was the person calling himself "Steve" and were able to piece together the sequence of telephone calls which I have outlined.
134. On 29 April 2004 after the telephone records had been disclosed, Mr Martin obtained an injunction against Mr Fenton in the same terms as the previous injunction against Mr Small. The injunction against Mr Small and Mr Fenton was continued until trial or further order.
135. There is one further episode relied on by Mr Martin. On 10 October 2004 Mr Martin went to Simons, his electrical supplier. He walked out of the shop and as he was crossing the road, he saw Mr Small driving in. Mr Small, according to Mr Martin, got out of his car and as he was walking towards the shop he was shouting "*you cunt*" which he repeated four times. Mr Martin said he was quite shaken after this meeting.
136. Mr Small admits that he said "*you cunt*" in the heat of the moment but said that he was provoked by Mr Martin who was laughing at him. Mr Small denied that his conduct amounted to harassment. In my view, without making any finding one way or the other, it seems to me that this is the sort of incident which on its own is a separate and relatively trivial incident and I am prepared to treat it as such in so far as it is necessary to do so. I am satisfied that whatever the conduct of Mr Small was it did not amount in all the circumstances to a further act of harassment.
137. I have had the advantage not only of piecing together the evidence from the recorded messages but also of considering the evidence in the context of the sequence of telephone calls and text messages and also of hearing from Mr Small and Mr Fenton. I reject Mr Small's evidence that he knew nothing about Mr Fenton's telephone calls to Mr Martin and that his own communications with Mr Fenton were confined to arranging meetings at the Sports Centre. I am satisfied that Mr Small and Mr Fenton were acting in concert in relation to the telephone calls and messages between Mr Fenton and Mr Small and Mr Fenton and Mr Martin. There clearly were discussions between them as to how Mr Fenton was to proceed and reports from Mr Fenton to Mr Small on the actions which Mr Fenton had taken. I am satisfied that Mr Small instigated the conduct and must bear significantly the greater share of the blame.
138. I am also satisfied that their conduct amounted to serious harassment of Mr Martin and that Mr Small and Mr Fenton knew or ought to have known that they did amount to harassment of Mr Martin. I reject Mr Small and Mr Fenton's explanation, which was in each case given in evidence unconvincingly, that in their communications they were discussing arrangements for future visits to the gym. I am satisfied that a significant part of the communication between Mr Fenton and Mr Small related to Mr Fenton's communications and attempted communications with Mr Martin.
139. Under the statute, the victim of the conduct in question (being a breach of Section 1 of the Act) may claim damages for any anxiety caused by the harassment and any financial loss resulting from the harassment.
140. I accept that over a period starting in early March 2003 for a period of about seven weeks to the granting of injunctions against Mr Small and Mr Fenton, Mr Martin and his family suffered distress from the continuous telephone calls and messages. I am also satisfied that he did not over react to them. The consequences of the conduct of Mr Fenton and Mr Small were as follows:
 - i As a result of his concern and in particular putting the message at 3.07 pm on 12 March 2004 in the context of previous behaviour by Mr Small and Mr Fenton, Mr Martin was sufficiently worried to go to the police. The fact that Mr Fenton did not identify himself made the telephone call much more disturbing. This conduct has to be placed in the context of the two earlier acts of Mr Small which amounted to harassment.
 - ii The message from Mr Fenton at 3.40 pm on 14 March 2004 reasonably caused Mr Martin again to report the matter to the police.
 - iii The message from Mr Fenton on 16 March 2004 threatening that if Mr Martin did not get in touch with Mr Small things would get nasty made Mr Martin feel very apprehensive for himself, his pregnant wife and his two year old twin daughters.
 - iv Also on 16 March Mr Martin attended the police station and made a statement.

- v Also on 16 March after a further message from Mr Fenton the police attended Mr Martin's house and he went with them to the police station. He made a further statement at the police station in the early hours of the morning of 17 March 2004. I discount the incident late on the evening of 16 March 2004, which it is conceded by Mr Martin, cannot be proved against Mr Fenton. Even without this incident Mr Martin was justified in hiring security guards to guard himself and his family.
- vi On 17 March 2004 Mr Martin received another disturbing telephone call from Mr Fenton. He reasonably went to court and obtained an injunction against Mr Small which was served on 18 March 2004. Mr Fenton was still cloaked in anonymity and no doubt expected to remain so.
- vii Despite the injunction Mr Fenton made another telephone call at 12.23 pm on 18 March 2004 and thereafter continued to telephone at less frequent intervals.
- viii Thereafter Mr Martin and his family continued to suffer serious anxiety whilst the maker of the telephone calls was traced and because of the short messages that continued to be left on his answer phone.
- ix On 29 April 2004 Mr Martin obtained an injunction against Mr Fenton.
- x I am prepared to treat the episode on 1 October 2004 either as an unfortunate episode or as an isolated occurrence which does not add to the damages.
- xi The failure of Mr Small and Mr Fenton to admit to what they were doing resulted in the necessity for the hearing before this court which has caused Mr Martin and his family the distress of a long court case including Mr Martin having to go into the witness box and be cross examined.

QUANTUM OF DAMAGE

141. For guidance as to how I should approach quantum, the parties helpfully referred me to **Perharic v Hennessy** decided by the Court of Appeal on 9 June 1997 but heard at first instance on 28 March 1996 before the 1997 Act was enacted. The Court of Appeal (Sir Richard Scott V-C) made it clear that damages for injury to feelings should not be awarded by reference to personal injury cases and, in particular, to awards in cases involving psychiatric injury. Sir Richard Scott said in his judgment that the judge "*should have endeavoured to assess the nature of the distress that was caused. He should have endeavoured to assess the nature of the distress that that conduct was likely to have caused and the extent of the distress that it had caused to the Plaintiff. ...The Judge would have had to try to decide how to reflect in money terms the injury that had been inflicted on the Plaintiff in the interference with her reasonable enjoyment of her home as something to which every householder is entitled.*" The Learned Judge concluded "*if he (the judge) had approached the case in that broad brush way I would have regarded an appeal against quantum as hopeless*".
142. In **Vento v Chief Constable of Yorkshire** [2002] EWCA Civ 187; [2003] ICR 318, Mummery LJ in a very careful judgment after reviewing previous decisions (but not **Perharic**) set out the principles on which compensation for injury to feelings (as distinct from psychiatric or similar personal injury or aggravated damages) should be ordered in discrimination cases. These may appear to conflict with the broad approach of Sir Richard Scott. The Court of Appeal's broad guidance in such cases enabling justice to be done to both sides is as follows:
- "i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race. Only in the most exceptional cases should an award of compensation for injury to feelings exceed £25,000.*
 - ii) The middle band of between £5,000 and £15,000 should be used for serious cases which do not merit an award in the highest band.*
 - iii) Awards of between £500 and £5,000 are appropriate for less serious cases such as where an act of discrimination is isolated or one off occurrence. In general awards of less than £500 are to be avoided altogether as they risk being regarded as so low as now to be a proper recognition of injury to feelings."*
143. In that case the court awarded the sum of £18,000 for injury to feelings (plus aggravated damages not sought in this case). The Court of Appeal emphasised (paragraph 66 of the judgment) that within each band there is considerable flexibility.
144. In **Metropolitan Housing Trust v H** (September 2003) a Recorder awarded ?10,000 for injury to feelings where a neighbour had carried out a vicious and prolonged campaign of harassment over a period of

two years including violence, threats of violence and unpleasant verbal abuse. ([2004] 5CL Para 134). I cite the case only to indicate the general figure awarded and not by way of any comparison with the present case.

145. I approach quantum in this case by emphasising that, although related specifically to discrimination cases, I view the general guidelines in **Vento** as a helpful aid in arriving at a fair assessment of damages in this individual case. The guidelines are helpful in assessing the appropriate damages in cases involving injury to feelings. It is necessary to consider carefully the guidelines set out by Sir Richard Scott but in the context of the guidance given in **Vento**. I need to consider first the nature of the distress caused to the injured party, Mr Martin, and the consequences on him in order to reflect in money terms the injury which he suffered.
146. This is a serious case of a course of conduct of harassment which was intended to intimidate Mr Martin. It was inexcusable even taking into account the poor way in which Mr Small was treated in relation to the building contract and the anger which he naturally felt about it. The conduct continued from early March 2004 until the injunctions were obtained at the end of April 2004 and it was intensive and calculated to frighten Mr Martin and his family and cause them distress and succeeded in doing so. I am satisfied from Mr Martin's own evidence that the distress was acute and prolonged. After April 2004, distress in the form of apprehension and worry continued as a result of the failure of Mr Small and Mr Fenton to own up to what they had done and to admit that they were acting in concert.
147. In my view, taking the categories in **Vento** as broad guidance, Mr Small and Mr Fenton's conduct does not merit an award in the highest band set out in **Vento** but does merit an award in the middle band. This was not a one off or isolated act. It amounted to serious harassment which caused serious fear and apprehension to Mr Martin and his family. Doing the best I can and taking all matters into consideration I assess the sum at £10,000. If I had taken the broad brush approach alone, as advocated by Sir Richard Scott, I should also have arrived at the sum of £10,000.
148. This sum is in addition to the cost of the hire of the security guards. In my view it was entirely foreseeable that as a result of the actions of Mr Small and Mr Fenton, even disregarding the late night telephone call on 11 March 2004, Mr Martin would take such action for his own and his family's safety.
149. The sum is liable to be paid to Mr Martin both by Mr Small and Mr Fenton. It should be apportioned between Mr Small and Mr Fenton in relation to liability to each other (but not Mr Martin) as 60% for Mr Small and 40% for Mr Fenton.
150. I have not heard the Defendants' submissions in relation to the grant of a permanent injunction against Mr Small and Mr Fenton, (as opposed to an undertaking) I will deal with this matter in a further judgment.
151. I can deal shortly with Mr Martin's claim against Mr Fenton that he induced the breach of the contract between Mr Small and Mr Martin and/or that Mr Small or Mr Martin suffered damage as a result of Mr Fenton's interference in their business relations. It is clear to me on the facts that Mr Fenton's conduct did not have any significant effect on the breakdown of the contractual relations between Mr Martin and Mr Small. It did not, on the facts as I have found them, induce the breach of contract under which Mr Martin failed to carry out the work on time. Neither party suffered damage in their business relations as a result of Mr Fenton's conduct. These were already damaged beyond repair.
152. In these circumstances I find for Mr Small in the first action. He is entitled to recover damages against Mr Martin in the sum of £48,532.25. I find for Mr Martin in the second action and assess the total damages at £12,256 payable to Mr Martin by Mr Small and Mr Fenton. Under the Civil Liability Amendment Act I apportion the damages between them at 60% for Mr Small and 40% for Mr Fenton.

Mr K Munro (instructed by Abercorn) for the Claimant
Mr R Deacon (instructed by CKFT) for the Defendant