Vexatious litigants & access to justice: Past, present, future: Speech by the Rt. Hon. Sir Anthony Clarke, Master of the Rolls

Introduction

1. It gives me great pleasure to give this, the first of the keynote speeches today. Before doing so I owe perhaps a few words of explanation as to the title. It is sometimes said that restrictions placed on a vexatious litigant's ability to issue and continue with proceedings infringe that individual's right of access to justice. In this paper I argue that such restrictions do not conflict with that right. They may restrict access to justice but they do not infringe the right of access to justice. Any conflict between the right of access and the restriction placed upon it in this context is more apparent than real. In what follows I intend to outline my reasons for holding this view.
2. In order to provide some necessary context for my views on this subject I will first provide a brief outline of the development in England and Wales of the jurisdiction to restrain the actions of vexatious litigants. I do so by looking at the origins of two control mechanisms in the late 19th Century and then by outlining the state of those control mechanisms today. Before doing so however I would like to pay tribute to John Sorabji who is responsible for all the good bits in this paper. I take full responsibility for all the errors.

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The Past - Historical origins

3. It is only since the middle of the 19th Century that vexatious litigation has posed a significant problem in England and Wales. In a way this is not surprising as it was during this time that court procedure began to be simplified and, under the influence of writers such as Jeremy Bentham and reforming lawyers such as Lord Brougham LC, the courts started to focus less on strict compliance with procedural rules and more on arriving at a judgment on the merits in litigation.
4. Simplifying procedure brings with it the obvious benefits of cost and time savings for litigants and the courts – benefits which all civil justice systems continue to spend considerable time and effort in seeking to achieve. It also has the benefit that it opens up access to the courts to those who cannot afford legal representation, or for perfectly valid reasons choose not to appoint such representatives. Those are the benefits. Unfortunately it also creates the circumstances where, with greater ease than under a more complicated regime that required the input of legal professionals before a claim could be commenced, a litigant in person (LIP) can more easily bring vexatious claims. The greater ability to bring claims gives rise to a greater ability to bring vexatious claims.
5. During the 19th Century only a small number of litigants appear to have engaged in litigation such that the courts decided that action needed to be taken to restrain their activities. As Lord Woolf MR (as he then was) noted in *Ebert v Venvil* at least six litigants in the 1880s and 1890s were made subject to orders restraining their ability to commence new proceedings.[1] Such orders were made under the court's inherent jurisdiction to prevent the abuse of its process and foreshadowed the enactment in 1896 of the *Vexatious Actions Act* , which created what are now known in England and Wales as civil proceedings orders made under the 1896 Act's statutory successor, section 42 of the *Supreme Court Act 1981* . Such an order, which is made following an application to the High Court by the Attorney-General, can restrain a litigant's ability to initiate, or continue, either civil or criminal proceedings, or both.[2] At the present time there are 175 extant orders under section 42: 88 of which have been imposed since 1995. The subject of one such order is known to be deceased[3], one is a limited company.[4] One person is subject to two such orders.[5]
6. The 1896 Act was not however introduced as a result of the activities of the six litigants dealt with under the court's inherent jurisdiction. It was one of those rare Acts that was introduced primarily as a result of the activities of a single person; in this case Alexander Chaffers. Alexander Chaffers was from 1845 – 1863 an attorney and solicitor. From around 1863 until the passing of the 1896 Act he

conducted a vast amount of what was undoubtedly vexatious litigation against many leading figures of the day. In the early 1890s his activities came to a head when he initiated some 48 sets of proceedings against, for instance, the then Prince of Wales, Archbishop of Canterbury, Speaker of the House of Commons, the Clerk of the House of Commons, the trustees of the British Library, the Lord Chancellor and numerous judges: at the time it was not settled law that judges were immune to suit.[6] Chaffer's was not simply responsible for initiating such litigation in his own right however: between 1882 and 1889 his protégé, Georgina Weldon, initiated over 100 vexatious actions before retiring to France to write her no doubt fascinating memoirs.

7. The hallmark of the persistent and vexatious litigant shines through in one of Chaffers' earliest and more mundane actions. In the early 1860s he brought an action for detinue against the trustees of a will. He sought the return of papers held by the trustees. The trustees returned the papers to him. He however continued the action notwithstanding that fact that any *'rational and objective assessment'* , to quote Lord Bingham CJ, would have resulted in the action being discontinued.[7] Unsurprisingly the action, described by opposing counsel as ' *scandalous and vexatious* ' was dismissed.[8]
8. In addition to the development of this jurisdiction to restrain litigants from commencing fresh proceedings, in 1879 the courts also developed a further mechanism to restrain vexatious litigation. In the well-known case of *Grepe v Loam* the Court of Appeal, in a very short judgment, imposed a form of restraint on Mr Grepe which restrained him from issuing further applications within those proceedings without the prior permission of the court.[9] While there was no reference in the judgment to the basis on which the court could impose such restrictions, it is clear that the origin of the jurisdiction was the court's inherent jurisdiction to prevent its process being abused. This form of order was not one, unlike the power to restrain the issue of fresh proceedings, which was later codified in a statute; at least not at that time. It remained a power exercised under the court's inherent jurisdiction.

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The Present - Developing the Jurisdiction

9. The *Grepe v Loam* order, along with the 1896 Act, arose following a period of procedural reform, which could be said to have increased the ability of litigants in general, and LIPs in particular, to obtain access to the courts and thus increased the potential for determined individuals to abuse the system and issue vexatious proceedings. Equally, following the development of these two control mechanisms the law remained settled until the late 1990s.
10. While there were still vexatious litigants and individuals who were made subject to *Grepe v Loam* orders there was no need, at that time for the courts, or Parliament, to develop this jurisdiction further. Equally the only changes made to the power set out in the *Vexatious Actions Act* were: first, its substitution by section 51 of the *Supreme Court of Judicature (Consolidation) Act 1925* , which later became section 42 of the *Supreme Court Act 1981* , secondly, the introduction of the criminal proceedings order in section 42 by way of an amendment in 1985[10] ; and finally, the introduction, again in section 42, of a power to make an order under that section for a limited period of time.[11]
11. During the late 1990s the English civil justice system underwent a number of reforms that are arguably comparable, at least in some respects, to those introduced in the 1870s. On the one hand Lord Woolf's Access to Justice reforms have reformed and, again, simplified procedure.[12] While on the other hand, the enactment of the *Human Rights Act* in 1998 introduced Article 6 of the European Convention of Human Rights into English law. Article 6, is of course, the right to fair trial, which could be said to restate in statutory form the common law constitutional right of fair trial.[13] Effective access to the courts is an essential aspect of that right. It is perhaps no coincidence that during this period of reform, aimed at improving access to justice, the English court has revisited the ways in which restrictions can be imposed on vexatious litigants.
12. While I would not want to adopt a line of argument that could be said to fall foul of the *post hoc ergo propter hoc* fallacy, the number of vexatious litigants and vexatious applications has increased substantially since these reforms. As Lord Phillips MR (as he then was) noted in *Bhamjee* v Forsdick & Others (No 2), which I shall call *Bhamjee* : " *. . .the courts are [now] facing very serious*

contemporary problems created by the activities of litigants like Mr Bhamjee who are bombarding them with applications which have no merit at all ."[14]

13. Not only has the sheer volume of applications by such litigants increased markedly since the late 1990s, but the number of such litigants, which had previously been small in number, has also increased. The problems they pose have thus increased on two fronts. To face this challenge the Court of Appeal in a series of judgments extended the *Grepe v Loam* jurisdiction beyond its traditional limits. It did so for two main reasons: first, *Grepe v Loam* orders were in themselves insufficiently flexible to deal with the range of actions taken by such litigants; and secondly, the use of civil proceedings orders was too blunt an instrument and one which often could not be deployed against the litigant in question.
14. The first of this series of judgments was *Ebert* v Venvil & Another (2000), which I shall call *Ebert* .[15] This was followed by *Bhamjee* in 2003 and then by *Mahajan* v Department of Constitutional Affairs[16], which I shall call *Mahajan* , in 2004. These three judgments extended the reach of the *Grepe v Loam* order in a number of ways. For instance, it was extended in *Ebert* , via what was named an *extendedGrepe v Loam or Ebert v Venvil order* , to apply to litigation in County Courts. *Grepe v Loamorders* had only applied to the High Court. In addition the *Ebert v Venvil order* went beyond the restriction on issuing fresh applications in the existing proceedings. It restrained a litigant from issuing fresh proceedings arising out of the initial proceedings, against for instance the lawyers involved for either party, the judges involved or indeed the other party to the initial proceedings. A litigant under an *Ebert* order needed the court's permission to issue proceedings. The permission application was paper-based and carried out by a judge nominated in the body of the restraint order to deal with such applications. Such orders were time-limited to an initial two year period with the power to extend them further.
15. *Bhamjee* extended this jurisdiction. A *Bhamjee* order essentially mirrors the scope of a civil proceedings order. To impose such an order the court would have to be satisfied that an *Ebert* order had been imposed and had failed to curb the litigant's activities. These orders could only be imposed by a High Court judge, in respect of both the High and County Courts or by a senior County Court judge in respect of the County Court. They could also be extended to place restrictions on a litigant's ability to seek permission to appeal orders made against him.[17] In *Mahajan* the Court of Appeal held that it too had the power to impose *Bhamjee* orders.[18]
16. *Ebert* , *Bhamjee and Mahajan* represent the main thrust of developments in England and Wales. The orders they introduced were recently codified and now form part of the Civil Procedure Rules (CPR), for which see CPR 3.11 and Practice Direction – Civil Restraint Orders. As a result of the codification, the *Grepe v Loam* , *Ebert* and *Bhamjee* orders were respectively renamed as limited, extended and general civil restraint orders. Courts were also placed under a duty to consider making such orders whenever a statement of case or application was struck out or dismissed without merit.[19]
17. In addition to the development of civil restraint orders, the main focus of which is to limit the ability of litigants to persist in making vexatious applications, the court's inherent jurisdiction has also been utilised to impose similar orders in related areas. In *ex parte Purvis* it was established that civil restraint orders can be imposed against lay individuals, known as McKenzie Friends, who help, or rather purport to help, litigants in court, but who are not themselves parties to the proceedings.[20] Equally the court has held that it can restrain litigants' access to court buildings and court staff where their conduct has been seriously abusive and is seriously impeding, or likely to seriously impede, the proper administration of justice. This power is however only exercised in exceptional circumstances.[21]

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The Future - Access to Justice

18. Vexatious litigation poses a number of threats to the efficient operation of any civil justice system. Those threats stem from the manner in which the vexatious litigant conducts litigation before the courts. Lord Bingham CJ (as he then was), in Attorney-General v Barker, offers perhaps the best description of vexatious litigants, and in doing so lays bare the problems to which they give rise. He said:

"The hallmark [of a vexatious litigant] usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop." [22]

19. The vice identified by Lord Bingham CJ of such meretricious and persistent litigation is that it poses a threat to the court, individual members of society and society at large. It uses up increasingly large amounts of the scarce financial resources that are available to the courts. It takes up scarce judicial time. Also, it has a deleterious effect on those individuals in society who are the focus of the vexatious litigants' attention, not only in terms of time and money but equally in wider social terms through the harassing effect of such litigation and the detrimental effect it has on the civil justice system as a whole.
20. An appreciation by the courts of these problems is evident from the Court of Appeal's judgment in *Bhamjee* . In that judgment Lord Phillips MR said: "(8) In recent years the courts have become more conscious of the extent to which vexatious litigation represents a drain on the resources of the court itself, which of necessity are not infinite. There is a trace of this in the judgment of Staughton LJ in Attorney-General v Jones [1990] 1 WLR 859, 865C, when he explained why there must come a time when it is right for a court to exercise its power to make a civil proceedings order against a vexatious litigant. He said that there were at least two reasons:

"First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances and should not be squandered on those who do not."

(9) In Attorney-General v Ebert [2000] EWHC Admin 286 at [50] Laws LJ articulated this anxiety in the following terms:

"Mr Ebert's vexatious proceedings have ... been very damaging to the public interest; quite aside from the oppression they have inflicted on his adversaries. ... The real vice here, apart from the vexing of Mr Ebert's opponents, is that scarce and valuable judicial resources have been extravagantly wasted on barren and misconceived litigation, to the detriment of other litigants with real cases to try." Silber J, concurring, referred (at para 61) to "a totally unjustified use of judicial time" [23]

21. The combination of these detrimental effects on the courts and individuals necessarily gives rise to a wider, negative, impact on society as a whole through weakening the court's ability to properly administer justice. It is not an exaggeration to say that ultimately vexatious litigation, by posing such a threat to the proper administration of justice, tends to undermine the rule of law.
22. The need to protect the court, its resources, and the general public from the negative effects of vexatious litigation presents a strong prima facie justification for restricting the ability of such litigants to pursue litigation through the courts. As I noted at the outset it might however be argued that placing restrictions on what is generally known as an individual's right of access to justice, whether under the common law, Article 6 of the *European Convention of Human Rights* or similar legislative provision, is inimical to that very right. In my view it is not. It is not for a number of reasons.
23. Firstly, it is not because, as I have said, vexatious litigation has the capability to undermine the rule of law. If courts are required to utilise their scarce financial and temporal resources on vexatious claims and applications their ability to properly deal with claims and applications that have genuine merit will be diminished. Such claims may not be heard due to lack of time or resources. If heard, the hearing may be delayed for a lengthy period of time. Equally, if heard, a judgment may then be delayed because the judge has to spend precious time dealing with a vexatious litigant, or with other matters that have been referred to him to hear as a consequence of vexatious litigation generally. The fact that it has often been said, from *Magna Carta* to Bentham, that justice delayed is justice denied does

not diminish its truth.[24] Denial of a hearing presents the application of that maxim.

24. Delay or denial of a hearing has the potential to undermine the rule of law for the simple reason that it calls into question the court's ability to fulfil its primary function, which is of course to do justice according to law. It undermines the court's ability to ensure that claims and applications are decided on their merits and that the court arrives at effective and correct judgments. Where courts are unable to deal properly with genuine disputes in this way the fabric of civil justice, to borrow Sir Jack Jacob's famous phrase, will wear thin and may well tear through.[25] If individuals, and society as a whole, arrive at the conclusion, through experience of a civil justice system unable to deal properly with their disputes, that the justice system is unable to deliver justice the risk must arise that they will seek to resolve their disputes in more direct ways, ways which might bring them to the attention of the criminal justice system. All of this tends to undermine the rule of law.
25. It seems to me that a court is under a duty to act in a way that furthers the rule of law. It does so as courts are not solely concerned with ensuring that an individual's right of access to justice is satisfied. As Edmund-Davies LJ explained in *Associated Leisure v Associated Newspapers* :

    ". . . courts are here to administer justice. The concept of justice is not confined to the interests of the particular litigants; it embraces and extends to the protection of the common weal."[26]

26. The common weal is protected by ensuring that the proper administration of justice is not undermined or weakened to any considerable degree, and that the rule of law is thus not undermined, whether by the actions of a number of persistent vexatious litigants or more generally. While any court must be very careful, as was recognised as long ago as 1840 by Baron Alderson in *Cocker v Tempest* , in exercising its inherent jurisdiction to prevent its processes being abused it appears well justified to do so where if it did not the rule of law would be weakened, or if its ability to act as a court of justice would be compromised. Indulging litigants who seek to abuse the court's process presents too much of a risk to matters of fundamental importance for the court's to countenance it.[27]
27. Secondly, and quite apart from what could be called the rule of law, justification of control of vexatious litigation, control can be justified by reference to the right of access to justice. Far from being inimical to that right, control mechanisms are in my view on the one hand wholly consistent with it, whilst on the other do not engage the right at all.
28. Controls on vexatious litigation are consistent with the right of access to justice for the simple reason that vexatious litigation infringes that very right. Protecting individuals from litigation that infringes the right of access to justice in itself supports that right. It does so because it enables the court to maximise access to justice for litigants who have genuine claims. Moreover vexatious litigation infringes the right of access to justice for, at least, two further reasons.
29. First, one of the central elements of the right of access to justice is that disputes are adjudicated within a reasonable time. *Magna Carta* and Bentham resonate in the common law and Article 6.[28] Delay or denial of a hearing as a result of vexatious litigants consuming disproportionate amounts of the court's time and financial resources represents a restriction on the right of other individuals' very own right of access to justice. This right is not a solitary right, which exists in glorious isolation. It is an indivisible right. It is, as Lord Justice Laws stated correctly, one which is as applicable to claimant and defendant in any one set of proceedings. As he put it, while rejecting an argument that Article 6 of the European Convention could be relied on to justify a claim continuing after a great deal of delay by one of the parties:

    "It would be wholly lamentable if the salutary provisions of the Human Rights Act – and here, in particular, Article 6 of the Convention – were allowed to be deployed to run a coach and horses through properly considered and established procedural rules whose purpose is to ensure a fair trial to all parties and to the litigation to which they are applied." [29]

30. The point Laws LJ is making is that the right to fair trial, and court rules designed to implement that right, are as applicable to the claimant as they are to the defendant. If the court is too lenient in favour of a claimant who has failed to progress his case within a reasonable time it runs the risk of denying the defendant his right to receive adjudication within a reasonable time. In assessing the right to a fair trial courts must not forget that the right applies to and encompasses both claimant and defendant at the same time.

31. It can be said that Laws LJ's statement is equally applicable to litigants in one set of proceedings and litigants in other proceedings. The grant of disproportionate resources to any one set of proceedings, or one litigant, could infringe the right to a fair trial on the ground that it diminishes the resources available to other litigants. It could be said that for this very reason English civil procedure now imposes a duty on parties to litigation. It is a novel duty; one which has never before been articulated in English procedure and was introduced following Lord Woolf MR's reforms.[30] It is the duty imposed on parties to assist the court in furthering the overriding objective of civil procedure. Furthering the overriding objective, which is to act fairly, requires the court and the parties to ensure, amongst other things, that no more than proportionate time and resources are expended on any particular set of proceedings. What is proportionate is assessed by reference to all proceedings before the courts.
32. Vexatious litigation diminishes court resources and needlessly expands court time. It does so for no good reason. It is in and of itself an infringement of the right to fair trial, of access to justice and, in England and Wales, the duty to assist the court in furthering the overriding objective. I need only note that the overriding objective is in itself a particular expression of the Article 6 right.
33. Further, and this applies more readily to the individual who is the subject of the vexatious litigants' attention, if the courts were to permit such litigation to continue they would be tacitly denying another aspect of the right to access to justice. If they were to permit such litigation to continue, which in very many cases is litigation which seeks to reopen or simply relitigate the same dispute time and time again, the courts would be denying to the defendants in those proceedings their right to finality in litigation.
34. Restrictions placed on a vexatious litigant's right of access to justice, via civil proceedings orders or civil restraint orders support the rights of those individuals who are the immediate subject of the vexatious litigant's attention. In doing so they support the right of access to justice in general. They do so by supporting the right to receive a reasoned judgment in a reasonable time and finality in litigation.
35. Finally, it can justifiably be said that vexatious litigation does not in any event engage the right of access to justice. It does not because that right is the right to have genuine disputes properly and carefully adjudicated on their merits. The dispute which the vexatious litigant brings is in most cases one which has already been carefully and properly adjudicated. The vexatious claim is one which seeks to reopen or relitigate a dispute that has already been properly disposed of by the courts. The vexatious claim is thus one which abuses the court's process. The right of access to justice is not a right to abuse the court's process. Restrictions placed on an individual's ability to bring abusive proceedings cannot therefore infringe the right of access to justice.

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Conclusion

36. Vexatious litigation poses problems for the courts and society at large. It can even be said to pose problems for the litigants who initiate such proceedings. It does so as it represents an inability to draw a rational and reasonable halt to a dispute which has been fairly and properly adjudicated, albeit the result of that adjudication was clearly not the one the litigant firmly, perhaps too firmly, believed he deserved to achieve.
37. I hope that the recent judicial developments in England and Wales are the last that are needed. I hope that they are effective and that judges are careful in the way in which they apply civil restraint orders. Hope springs eternal. What I am sure of however is that the restrictions that the English and Welsh court can impose are not only consistent with the right of access to justice, in that they are a proportionate restriction on that right imposed for a legitimate purpose; that purpose being that they seek to protect the rule of law and the right to judgment in a reasonable time and finality in litigation. Equally I am sure that the restrictions imposed do not infringe the right of access to justice as that right does not include the right to abuse the court's process. Where the claim is not brought in abuse of process the litigant subject to such restraint will, of course, be granted permission to continue with the proceedings.
38. In light of this I am confident that the English and Welsh courts will deal fairly and reasonably with vexatious litigants, with those subject to their attentions and society at large. Professor Taggart notes in his excellent article in the Cambridge Law Journal, from which (I am ashamed to say without

consent) I borrowed earlier in my account of the development of civil proceedings orders, that the *Vexatious Actions Act 1896* was exported to a large number of common law jurisdictions.[31] I hope, perhaps ambitiously, that the recent English developments and the rationale behind them can, in a similar way, be of some assistance further afield.

Footnotes:

1. [2000] Ch 484 at 495 (CA). The six cases were: Milissich v Lloyd's (unreported), 18 December 1880; Butson v Davies (unreported), 05 June 1888; Rawlins v Burton Yeates & Co (unreported), 05 February 1889; Torkington v Torkington (unreported), 22 May 1889; Milissich v Lloyd's (unreported), 20 May 1892; and Marcuson v Postmaster General & Governor & Company of the Bank of England (unreported), 29 October 1894. [Back to footnote 1]

2. Section 42 Supreme Court Act 1981: "(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
(a) instituted vexatious legal proceedings, whether in the High Court or any inferior court, and whether against the same person or against different persons; or
(b) made vexatious applications in any legal proceedings, whether in the High Court or any inferior court, and whether instituted by him or another,
the court may, after hearing that person or giving him an opportunity of being heard, order—
(i) that no legal proceedings shall without the leave of the High Court be instituted by him in any court; and
(ii) that any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
(iii) that no application (other than an application for leave under this section) shall without the leave of the High Court be made by him in any legal proceedings instituted, whether by him or another, in any court.
(2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
(3) Leave for the institution or continuance of, or for the making of an application in, any legal proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.
(4) No appeal shall lie from a decision of the High Court refusing leave for the institution or continuance of, or for the making of an application in, legal proceedings by a person who is the subject of an order for the time being in force under subsection (1).
(5) A copy of any order made under subsection (1) shall be published in the London Gazette." [Back to footnote 2]

3. Mr Gerald Moss [Back to footnote 3]

4. Daisystar Ltd [Back to footnote 4]

5. Mr Geradjahu *Ebert* . The first was imposed on 07 July 2000, the second on 13 July 2004. [Back to footnote 5]

6. See Professor M Taggart, Alexander Chaffers and the Genesis of the Vexatious Actions Act 1896, Cambridge Law Journal, 63 (3), 2004, 656 for a detailed account. [Back to footnote 6]

7. Attorney-General v Barker [2000] 1 FLR 759 at 764 [Back to footnote 7]

8. Chaffers v Grant, The Times, 09 December 1863 at page 10; Taggart, op cit, at 658 [Back to footnote 8]

9. (1887) 37 ChD 168 (CA). Lindley LJ, at 169, phrased the order in the following terms: "That the said Applicants or any of them be not allowed to make any further applications in these actions or either of them to this Court or to the Court below without the leave of this Court being first obtained. And if notice

of any such application shall be given without such leave being obtained, the Respondents shall not be required to appear upon such application, and it shall be dismissed without being heard." [Back to footnote 9]

10. Section 24 Prosecution of Offences Act 1985 [Back to footnote 10]

11. Only five civil proceedings orders under section 42 (2) have been made for a limited period of time: see Attorney-General v Price (19 March 1997) (unreported) (for 15 years); Attorney-General v Yeo (08 December 1999) (Unreported) (for 12 years); Attorney-General v Arora [2001] EWHC 594 (Admin) (unreported) (for 12 years); Attorney-General v Barrett [2001] EWHC 808 (Admin) (for 12 years); Attorney-General v Mahon [2003] EWHC 2435 (Admin) (for 12 years). [Back to footnote 11]

12. Lord Woolf MR, Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales (HMSO) (1995); Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (HMSO, London) (1996) [Back to footnote 12]

13. Bremer Vulcan v South India Shipping Corporation Ltd [1981] AC 909 per Lord Diplock at 917: "Every civilised system of government requires that the state make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant." [Back to footnote 13]

14. [2004] 1 WLR 88 (CA) at (3) [Back to footnote 14]

15. [2000] Ch 484 (CA) [Back to footnote 15]

16. [2004] EWCA Civ 946; [2004] 101 EG 26 [Back to footnote 16]

17. *Bhamjee* , op cit, at (48 – 52). This power was extended to litigants who automatically seek permission to renew an application for permission to appeal where an initial paper application was refused: see Perotti v Collyer-Bristow (a firm) [2004] 4 ALL ER 53. Mr Perotti at one time had approximately eighty such applications before the Court of Appeal: Attorney-General v Perotti [2006] EWHC 1002 (Admin). [Back to footnote 17]

18. For a detailed account of the development of these orders see: Sorabji, Protection from Litigants who Abuse Court Process Civil Justice Quarterly, 2005, 24 (Jan) 31. [Back to footnote 18]

19. CPR 3.3 (7), 3.4 (6), 23.12 and 52.10 (6) and Practice Direction – Civil Restraint Orders para 1 [Back to footnote 19]

20. [2001] EWHC 827 (Admin), approved by Divisional Court in Attorney-General v Purvis [2003] EWHC 3190 (Admin) [Back to footnote 20]

21. See Weston v Central Criminal Courts' Administrator [1977] QB 32 (CA); In re de Court (Times Law Reports, 27 November 1997); ex parte Leachman (16 January 1998) (unreported) (EWHC Admin); Binder v Binder (09 March 2000) (unreported) (CA); Attorney-General v *Ebert* [2001] EWHC 695 (Admin); *Bhamjee* ; [Back to footnote 21]

22. [2000] 1 FLR 759 at 764 [Back to footnote 22]

23. *Bhamjee* , op cit, at (8) – (9) [Back to footnote 23]

24. Magna Carta, Chapter 40; Bentham, Principles of Judicial Procedure, with the outlines of a Procedure Code, in The Works of Jeremy Bentham (ed. Bowring) (1843) (Tait, Edinburgh) Vol 2 at 19 [Back to footnote 24]

25. Sir Jack Jacob, The Fabric of English Civil Justice, (Sweet & Maxwell) (1987) [Back to footnote 25]

26. [1970] 2 QB 450 at 457. [Back to footnote 26]

27. (1840 – 1841) 7 M & W 501: “The power of the each court over its own process is unlimited; it is a power incident to all courts, inferior as well as superior; were it not so, the court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter for the most careful discretion. ” Cited with approval in *Bhamjee* at (11). [Back to footnote 27]

28. Union Alimentaria Sanders SA v Spain (1990) 12 EHRR 24; Scopelliti v Italy (1994) 17 EHRR 493 [Back to footnote 28]

29. Arogundade v Mayor & Burgess of London Borough of Brent (No 2) [2002] HLR 18 at (21) [Back to footnote 29]

30. CPR 1.1, 1.2, & 1.3 [Back to footnote 30]

31.Taggart, op cit, at 684 [Back to footnote 31]