

PROTEST, TRESPASSERS AND HUMAN RIGHTS – THE AFTERMATH OF ST PAUL’S AND THE OCCUPY PROTESTS

Looking at the approach to possession actions involving protest groups on public and private land

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1. New forms of peaceful protest are raising significant legal issues for private and public landowners, public authorities and the protesters themselves. The *Greenham Common* type long term, camped protest has moved from areas of land where the protesters could generally be left to protest in peace (on a highway verge in the countryside near the access to a military base) with very little impact on third parties, to buildings and open spaces in the heart of the London where it has been less possible/desirable to tolerate the impacts.
2. How has the law responded to these changes and what lessons are to be learnt? How do human rights play out in these cases?
3. This talk focuses on possession actions under CPR55 (not injunctions or trespass actions or self-help). It considers public land and private land separately.
4. The key recent case law in respect of protest on public land is *Mayor of London v. Hall* [2010] EWCA Civ 817 (“Parliament Square”) and *Mayor, Commonalty and Citizens of London v. Samede* [2012] EWCA Civ 160 (“St Pauls”). The headline position on public land established through those cases is that for long term protest camps:

“While the protestors’ Article 10 and 11 rights are undoubtedly engaged, it is very difficult to see how they can prevail against the will of the landowner, when they are continuously and exclusively occupying public land, breaching not just the owner’s property rights and certain statutory provisions, but significantly interfering with the public and Convention rights of others, and causing other problems (connected with health, nuisance and the like) particularly in circumstances where the occupation has already continued for months, and is likely to continue indefinitely” (St Paul’s at [49]).

5. But what does that mean for smaller scale protests, or for the ability of local authorities to immediately seek possession before a protest becomes entrenched?
6. And how, if at all, does that play out on private land?
7. What are the procedural problems to be overcome in such cases?

The relevant human rights

8. Apart from art 6 (fair hearing) the key human rights in play are art 10 (freedom of expression) and art 11 (freedom of peaceful assembly). Both of these are subject to such conditions or restrictions as are prescribed by law and are, so far as relevant, necessary in a

democratic society in the interests of public safety, for the prevention of disorder or crime, for the protection of health or moral or for the protection of the rights and freedoms of others. Other convention rights may also be impacted by protest: see e.g. art 9 – freedom of worship in St Pauls.

9. The rights and freedoms of others are not just their rights and freedoms protected under the convention but include the right to go about one's day to day life and to enjoy public spaces (*Parliament Square* [49]).

The Background

10. The occupiers of the *Greenham Common* permanent camp moved on some years ago.

Jones and the right of peaceful assembly on the highway

11. In 1999, the House of Lords held that peaceful, non-obstructive (short-term) protest on the public highway was lawful (*DPP v. Jones* [1999] 2 AC 240 (*Stonehenge/solstice*)). There the protestors had not committed the offence of trespassory assembly (s.14A of the Public Order Act 1986) as long as the assembly on the public highway did not amount to a public or private nuisance and did not obstruct the highway by unreasonably impeding the public's primary right to pass and repass.
12. The public right of protest assembly on the highway, subject to those caveats, was established. It is important to note that in giving judgment the House of Lords took into account and based its reasoning in part of the Convention rights even though the HRA 1998 was not yet in force. *Jones* can thus be seen as a vindication in the UK of the A10 and A11 rights. However, this was a short term assembly on the highway where there was no nuisance or unreasonable obstruction.

The Manner and Form of Protest – long term protest camps and Tabernacle

13. Post the HRA 1998 coming into force, the issue as to how to respond to long term protest camps/occupations first arose in *Tabernacle v. Secretary of State for Defence* [2009] EWCA Civ 23. That case concerned a once monthly weekend camp outside the nuclear research establishment at Aldermaston on the verge of the public highway.
14. The SoS had made regulations purporting to prevent gatherings and camping in what were called "controlled areas" outside but close to the perimeter fence in an attempt to stop these monthly protests. The protestors brought a challenge to the regulations under the HRA 1998 and in particular A10 and A11.
15. There was no compelling evidence of adverse impacts of the protest on anyone or on the military security of the base. The protests were peaceful and non-obstructive. The explanation as to the need for the regulations was largely dismissed.

16. The SoS argued in short: (1) protest yes; (2) protest encampment no. As long as the right to protest was protected, it was legitimate to control the *manner and form* of the protest.
17. The Court (per Laws LJ) disagreed. The manner and form may be an essential element of the protest. It may have acquired a symbolic force inseparable from the protesters message. There the long standing (23 year) peaceful gathering “has borne consistent, long-standing and peaceful witness to the convictions of the women who have belonged to it.”
18. To many, the “manner and the form” is the protest itself.
19. The relevant regulation was thus a disproportionate interference with the right to protest and was quashed.
20. The message protesters (and their lawyers) heard (whether correctly or not) was that public authorities would have to tolerate long term peaceful occupation of public land where such occupation did not cause harm to others.

Mr Haw and Parliament Square

21. Meanwhile the action moved to Central London.
22. Mr Haw had established a protest camp against the way in first Afghanistan and then Iraq in 2001 on the pavement on the central area of Parliament Square.
23. Westminster City Council (WCC v. Haw [2002] EWHC 2073) had sought and failed to obtain an injunction against his single tent. It was not an unreasonable obstruction of the highway. Westminster did not pursue the matter. Over time, others came to join him.

Democracy Village - large protest camp on Parliament Square Gardens

24. Over the 2010 General Election period, four major marches converged on Parliament Square and large numbers of people set up tents on Parliament Square Gardens (“PSG”). Surprisingly (and this will be a recurrent theme) the police did not intervene. The byelaws preventing such camping were wholly ineffective.
25. Within hours, the protestors had occupied and taken control of the whole of Parliament Square Gardens (“PSG”) establishing what they called Democracy Village (“DV”)¹ relying on the precedent of Mr Haw’s protest camp.

¹ Parliamentarians were not impressed with the “blot on the landscape” and the impact on their working environment, although the Queen was said to be unperturbed as she went in the State Coach to the Opening of the new Parliament.

26. Once negotiations had failed and it was evident that the protest was to continue long term, the Mayor of London (vested with control but not ownership of Parliament Square which was owned by the Queen) sought to evict the protestors seeking possession orders and injunctions.
27. Before issuing proceedings, the MoL did a careful balancing exercise of the factors in favour and against taking action placing great weight on the right to protest in a democracy (as the ECHR Case law required him to do) but also listed the harm that was being caused physically, in planning terms (camp site in the middle of London without running water or sanitation and next to major listed buildings) and to the wider public in terms of their use of PSG including for other protests.
28. Having resolved an important question as to title (which will interest property lawyers but which is not relevant to this seminar), the Court of Appeal (*Mayor of London v. Hall* [2010] EWCA Civ 817 [2011] 1 WLR 504, upheld the possession orders and injunctions made in (*Mayor of London v. Hall* [2010] EWHC 1613 (QB)):
 - a. it endorsed *Tabernacle* [37];
 - b. however “the greater the extent of the right claimed under article 10 or 11 the greater the potential for the exercise of the claimed right interfering with the rights of others and consequently the greater the risk of the claim having to be curtailed [38];
 - c. it held that the decision as to whether it was proportionate to evict was ultimately for the Court [43] and not the MoL based on *R(SB) v. Governors of Denbeigh High School* [2007] 1 AC 100 although they would be informed by the reasoning of the MoL. In the event the reasoning of the MoL was compelling and was adopted. The importance of a carefully reasoned report by the MoL before proceedings were issued was fundamental to the ultimate success in that case;
 - d. the length of time [49] combined with the harm to others (not limited to interference with the human rights of others but also the harm to their amenities etc.), the harm to the environment was easily enough to justify eviction; and
 - e. injunctions to uphold the criminal law were justified – the fines for breach of byelaws on PSG were no deterrent.
29. DV was thus removed.
30. Mr Haw had been made a party to those proceedings although his protest was separate from DVs appeal was allowed on one small issue going to proportionality. The claim against him ultimately succeeded in the High Court by which time Mr Haw was no longer present because of ill health.
31. Procedural points to note:
 - a. Court and claimant allowed many individuals to become named defendants – this caused major procedural difficulties and substantially prolonged the hearing. The protesters were aware that they could prolong the case and create procedural

problems for the Claimant by inundating the MoL and the Courts with applications from individuals. This then created potential Art 6 problems because each of the 19 defendants insisted on their full rights in courts.

- i. *Lesson for Claimants:* ensure a sole representative defendant is appointed by the Court (if necessary giving that person costs protection).
 - ii. *Lesson for future for defendants:* seek to secure costs protection through offering up a representative defendant.
- b. the Claimant went to great lengths to ensure that copies of documents were served across PSG and made available on the web and at its offices. Even then complaints were made by protestors of them not having a fair chance to prepare. If there had been skimping on the procedural steps, it would appear that the CA hearing would have been far more difficult including on A6 points:
 - i. *Lesson for Claimants* - whilst an order for substituted service is sensible, in practical terms it saves money and time in the long run if there is “over-service”
 - ii. *Lesson for Defendants* – ask Court at directions hearing to require all documents to be available on web and at a central location and copies provided to legal team ;
- c. the Claim Form had appended a full exposition of the law which accurately and in a non-partisan way told the protestors what the issues for the Court would be – so as to reduce the risk of any accusations relating to equality of arms and to avoid procedural delays during the hearing. All relevant case law was provided on the MoL website and copies provided on request. The result was that in Court the MoL was able to show that he had done everything to allow those protestors who are unrepresented to put their case forward in the hearing.
- d. negotiations were carried out – with hindsight that was a mistake for the Claimant. The small concessions made by the MoL to try to mitigate harm caused by the protest pending the hearing were then used against the MoL at the hearing:
 - i. *Lesson for Claimants:* ensure that any negotiations are recorded in writing and that the negotiations are expressly only with a view to minimising impact prior to the removal of the protest;
 - ii. *Lesson for Defendants:* non-compliance with agreed interim measures will be used against you (as in St Pauls);
- e. the production of a full report for the Mayor of London endorsed by him meant that the factors to go into the human rights proportionality exercise were fully articulated at the outset. This approach meant that the Mayor was properly directed in law and on the facts and that no argument could be made that he had taken into account factors which were of tangential (if any) relevance.
 - i. *Lesson for Claimants:* a full reasoning for the decision to take proceedings with the evidence to justify each point made is indispensable. It will demonstrate that the decision to proceed was not capricious or arbitrary, will make the decision maker approach the issue in the correct way and will give the Court a framework for its decision;
 - ii. *Lesson for Defendants:* do not let this report go unchallenged. Make your own representations to the decision maker before the decision to proceed is

made, and in Court take issue with any parts of the factual evidence on which it is based you can.

- f. the separate claims against Haw and Democracy Village were joined – this complicated the major case with the more discrete issues with Mr Haw. With hindsight it would have been better to keep the two separate.

32. Enforcement was ultimately straightforward - the HC warrant and HC enforcement powers were enough to persuade the police to very actively assist.

The legacy of PSG

33. However, the idea of camped protests in the heart of the City to draw the world's attention to any particular campaigning issue had caught on. The web was buzzing with similar protest ideas at various sites across London (and the world).

34. That "chatter" was coming to a head in early October 2011. Worldwide "Occupy" protests were planned - targeting the world's financial centres for obvious reasons. London was a prime target.

35. In the weeks before October 11th, many financial institutions and other businesses in London sought and obtained HC injunctions to protect their buildings from occupation by protestors on the back of intelligence/information gleaned from the web.

36. Paternoster Square (which houses the London Stock Exchange) was the prime target and wide ranging injunctions were obtained there.

37. Thus when on 11th October 2011, when the protest got to Paternoster Square it was stopped by the police who were there to prevent a breach of the peace and aggravated trespass. The protest therefore stopped outside St Pauls, and the tents were erected there instead. The police did not feel able to stop the camp being erected – although query why not given that there was wholesale obstruction of the public highway. At least some in the church appeared to welcome the protestors onto the forecourt of St Pauls. By Monday morning the protest was entrenched.

38. By accident, the Occupy protest had created a focal point for the worldwide Occupy movement on the steps of one of the world's most recognisable buildings. The location gave rise to some iconic photos which spread across the world.

St Pauls litigation

39. The City of London could not act quickly:

- a. it was not sure what land it owned, what was highway and what belonged to the church – title of open spaces and highways in the City is notoriously complicated going back to ancient charters. Fascinating subject for a history PHD but a legal nightmare;

- b. It also had to have the church onside with any action it took because otherwise the protest could simply move onto the forecourt of St Pauls;
 - c. there were obvious political sensitivities about the City preventing protest on a matter of major national importance; and
 - d. its preferred option was a short term camp and then voluntary moving on – so as to avoid the need for forceful eviction and it negotiated with a view to achieving this.
40. Whilst negotiations were sought to be progressed, evidence was collected with care:
- a. extent and numbers of protestors;
 - b. extent of obstruction of the highway;
 - c. extent of criminal and anti-social behaviour;
 - d. complaints from public, businesses;
 - e. interferences with the A9 rights of those attending St Pauls;
 - f. sanitation and cleanness issues; and
 - g. equality issues and issues relating to the needs of vulnerable residents at the camps.
41. On the basis of that evidence and a detailed report, and once negotiations had failed, the CoL decided to take action.
42. It is worth looking at how procedural lessons from *Parliament Square* were learnt and procedures changed in response.
43. Initial procedural points:
- a. Proceedings were comprehensively drafted – more like a Skeleton with all case law and all headline evidential points; all case law and full witness statements were provided with the Claim at the outset. Everyone knew in detail at the outset what the CoL’s case was. The purpose of this was to ensure that there were no delays in the directions for evidence to be presented;
 - b. service – the complete pack of documents were served across the protest camp and a separate website was provided with photographs being taken of service on each tent (to avoid allegations of inadequate service later); and
 - c. a preliminary hearing was arranged for directions and everyone informed of it at the time of service of the claim form (to avoid any delay).
44. The Directions hearing: The court was invited to appoint a representative defendant (CPR19.6) and the CoL (reluctantly) gave an assurance that it would not go for costs against the representative. The Court was invited to insist that anybody else who wanted to be a defendant applied with reasons in a short timescale – indicating why they wanted to be separately represented from the representative. In the event only three people did apply and all were allowed (compare the 17 or 18 defendants in PSG). The proceedings were also continued against “persons unknown” in case any other person claimed to have been missed out on service.
45. Issues with service were flushed out and substituted service orders made covering all future steps. All time lines were set out in the orders and those orders were then extensively

distributed. The aim being to ensure the hearing would be effective, and fair and that there would be no risk of art 6 challenges to it later. Leading and junior counsel appeared pro bono for the protestors.

46. The substantive hearing: By the time of the hearing all of the issues of fact about title, causes of action etc... had been resolved. Any points raised by the protestors were quickly answered/rebutted by the City.
47. At the hearing therefore, the focus quickly shifted onto the key question – proportionality given the importance of the right to protest [147]. The hearing took 5 days. Judgment was given in January 2012 (*City of London v. Samede* [2012] EWHC 34 (QB)). Possession was granted over the highway (including areas not yet occupied) and injunctions under the Planning Acts over land owned by the Church.
48. The judgment (very clear and well reasoned) came to very strong conclusions on the facts:
 - a. *Tabernacle* was distinguished [146]. Lack of harm/impacts there, compare the position at St Pauls. It now seems that the decision in *Tabernacle* is confined to its own facts
 - b. the Court gave weight to the way the CoL had assessed the pros and cons of possession [148];
 - c. the CoL's evidence had survived five days of challenge [152];
 - d. the case for the protestors and the right to protest was obviously strong – right to protest of “fundamental importance”; Defendants “powerfully motivated by the causes that inspire them”; protest was necessarily inconvenient for others – it was in the nature of human rights that they necessarily involved a degree of impact on others; many of the protestors had done all they could to limit their impacts [158];
 - e. however, the factors on the other side of the balance were very strong (“unusually persuasive”) and each of them would have warranted an order [165]
 - i. the protest camp was in breach of various legislation - planning, environmental health, public health, ecclesiastical law [160] and “plainly at odds with the intent and purpose of the statutory schemes”;
 - ii. it was impossible to reconcile the presence of the protest camp with the lawful function and character of the highway [161] and there was a considerable impact on other users of the highway;
 - iii. there was major interference with the A9 rights of others wishing to worship at St Pauls [162];
 - iv. environmental concerns, loss of trade to local businesses, crime and disorder; and
 - v. the length of time the protest had gone on.
49. Following *Meier*, the possession order extended to other highway land (not currently occupied) in the vicinity of St Pauls – on the basis that it was equivalent to the single wood in *Meier* and that but for the wider possession order, the protest camp would simply move.

The Court of Appeal – the final word?

50. Permission to appeal to the CA was sought and, following a very promptly arranged day long permission hearing, was refused. The headline argument was that, even on the basis of Lindblom J’s judgment, given the importance of the subject matter of the protest (to which the protestors spoke very eloquently) there was an unjustified interference with the right to protest [37]. The Court of Appeal said that the A10(2) and A11(2) balance was necessarily fact sensitive and will depend on a number of factors.
51. Lord Neuberger listed the following as a non-exhaustive list [39]:
- a. the extent to which the continuation of the protest would breach domestic law;
 - b. the importance of the precise location to the protestors;
 - c. the duration of the protest;
 - d. the degree to which the protestors occupy the land; and
 - e. the extent of the actual interference the protest causes to the rights of others;
52. Further the nature of the protest was relevant [41] with “political and economic” protest at the top end of the scale – although of course it was not for the Court to determine or consider the rights and wrongs of the subject matter of the protest [40].
53. Having set out that approach, the Orders were upheld on the facts [44]. General guidance was then given in the light of experience at PSG and St Pauls.

“[Following those cases] there is now... guidance available for first instance judges faced with cases of a similar nature...[61]

Of course each case turns on its facts, and where convention rights are engaged, case law indicates that the court must examine the facts under a particularly sharp focus. Nonetheless, in future cases of this nature, (where the facts involve a demonstration which involves not merely occupying public land, but doing so for more than a short period and in way which not only is in breach of statute but also substantially interferes with the rights of others) it should be possible for the hearing to be disposed of at first instance more quickly”.

The Current Position on Protest on public land

54. It appears to follow from *St Pauls* and *Jones* that:
- a. protest assembly on public land (including the highway) which is not a public or private nuisance and does not unreasonably obstruct the public’s rights is lawful whether under A10/A11 or common law;

- b. long term protest camps which are obstructive, in breach of statutory schemes and substantially interfere with the rights of others are not.

55. But where is the line to be drawn. At what stage can a public authority obtain possession and what evidence does it need?

Timing

56. CPR55 envisages being able to seek possession immediately upon possession being taken.
57. However, a key factor in both *St Pauls* and *PSG* was the fact that the protest camps had been present for several months and attempts to agree a long stop date for departure had failed. In both cases, the public authority had put off for a considerable time going to court.
58. Does the case law mean that public authorities would have difficulty getting immediate possession orders at the outset of “short term” (whatever that means) occupations of public land?
59. The ECHR case law concerns very short term protests and not protest camps. In *Kuznetsov* [2008] ECHR 1170, a public passageway in a courthouse was blocked by a protest for about half an hour. This was illegal under domestic law but there had been no complaints. The ECHR emphasised that “a degree of tolerance is required from the state” re: protests and the state had to accept that “any demonstration in a public place inevitably causes a certain level of disruption to ordinary life including disruption of traffic”. On the facts the interference by the state with such a short protest was disproportionate. But that was a very short duration protest.
60. There has never been a case where the ECHR has held that the degree of tolerance necessary extends to even a one day occupation. In *G v. Germany* (1987) approved by the ECHR in *Lucas* (App No 39013/02), prevention of regular (12 mins every hour) blockades of a highway access to a military base was lawful. A one night, single tent protest outside the Norwegian parliament was lawfully cleared by the police.
61. It thus seems that it will be possible for public authorities to take CPR55 proceedings very quickly in an appropriate case depending on the harm and the other factors raised by Lord Neuberger MR in *St Pauls*.

Evidence as to harm

62. In both *St Pauls* and *PSG* before proceedings were issued there was extensive evidence of various forms of harm. Is such evidence necessary before CPR55 proceedings can be issued?
63. First, in both cases, the evidence on each of many heads was individually sufficient to justify possession. Plainly in those cases, the public profile was so high that the public authorities

could not leave any “t” uncrossed, and went further in terms of evidence than was, with hindsight, necessary to secure the orders. It is not necessary to have such overwhelming evidence in the average case particularly in the light of the general comments in *St Pauls*.

64. Second, however, absent evidence as to harm, it is difficult to see how the Court can undertake the requisite balancing exercise under A10/A11 – there will be little to weigh against the fundamental importance of the right to protest. It appears that mere assertion of title will, in terms of public land and the right to protest, not be enough. There must be more.
65. Third, in the context of public land, some matters may be self-evident and not require significant elaboration – the exclusion of general public user; the obstruction of the lawful rights of others. In the cities, the general “planning” and environmental health inappropriateness of campsites will normally be plain. Campsites of any significant size on the highway will almost inevitably constitute an unreasonable obstruction if present for any prolonged period. These matters can be shortly stated.
66. The best advice to public authorities is therefore:
- a. to try to prevent a protest camp becoming established by seeking injunctions and police support (as per Paternoster Square);
 - b. in the event of a protest camp becoming established, take some time (days not weeks) to assess the impacts and to prepare a careful report weighing the importance of the right to protest and the other factors referred to in *St Pauls* against the harm;
 - c. in the meantime and alongside preparing for proceedings, seek to negotiate an end date; and
 - d. in the proceedings, adopt the procedural lessons from *St Pauls* and *PSG* set out above.
67. The *St Pauls* case has now been used successfully by various public authorities to stop long term camped protests across the country. No proceedings have got beyond the County Court.

Private Land

68. The Occupy movement has also targeted vacant bank (and other) buildings for use as “community universities” and campaigning headquarters.
69. *St Pauls* and *PSG* were examples of public land held for public purposes including (see *Jones*) for use for public assembly and protest. To what extent can the principles in those cases be applied across to private land?
70. The answer, in short, under existing case law, is that there is no direct read across. *St Pauls* and *PSG* was specifically addressing only protest on public land.

71. In *Sun Street Property Limited v. Persons Unknown* [2011] EWHC 3432 (Ch) (7th December 2011) Roth J considered a claim for possession of a former bank building occupied by an overflow from the St Paul's protest. The protestors claimed that the occupation of this building was intrinsic to the protest - "manner and form" - because they wanted to highlight the waste of resources in the City including vacant properties which could be used by those in need.
72. His Lordship held that public protest on public land raised "different considerations" from the occupation of private property [35] and he adopted an approach which is inconsistent with the *Tabernacle* manner and form approach [32]. His Lordship said this:

"The [Defendant's] submissions confuse the question of whether taking over the bank's property is a more convenient or even more effective means of the Occupiers expressing their views with the question whether if the bank.... recovered possession, the Occupiers would be prevented from exercising any effective exercise of their freedom to express their views so that, in the words fo the Strasbourg court, the essence of their freedom would be destroyed. When the correct question is asked, it admits of only one answer. The individuals or groups currently in the property can manifestly communicate their views about waste of resources or the practices of one or more banks without being in occupation of this building complex."

73. It was held that the case law on A10 and A11 gave "not the slightest" support for the argument that protestors could override private property rights [33].
74. The leading case is *Appleby v. UK* [2003] 37 EHRR 38 which appears to have survived the developments of the law in *St Pauls and PSG*. In that case, the applicant sought to set up two stands in a shopping centre to collect signatures for a petition about development in a local park. The centre owners refused permission. The ECHR held that:

"..notwithstanding the acknowledged importance of freedom of expression, [A10/A11] does not bestow any freedom of forum for the exercise of that right . Whilst is it true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even necessarily to all publicly owned land (government offices and ministries for instance). Where, however, the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of convention rights by regulating property rights. ..."

75. In the UK of course, *Jones, PSG and Parliament Square* can be relied on by private property owners to show that there is effective protection of A10/A11 rights in the public sphere and that therefore there is no justification for impinging on their A1P1 rights.
76. It therefore appears that private land owners will be able to secure possession without having to satisfy the balancing exercise in *St Pauls*. However, for bodies which are "on the cusp" between public and private (take for example universities) it would make sense for decision makers to record the harm to their operations which are caused by the protest camp (see the position in Bournemouth University where an offshoot from St Pauls took up

occupation at its main entrance after being evicted from St Pauls – possession was quickly obtained).

Procedural Issues on private land

77. Protest groups are well aware of the potential to delay possession (contrary to the basic thrust of CPR55) by relying on procedural failings. In *Sun Street* arguments on procedural issues delayed possession by several weeks. It is thus important to get procedures correct even though in the final analysis even procedural failings may not invalidate orders obtained because (as shown above) there will be no defence and thus, under the overriding objective, no justification for setting aside orders obtained following procedural mishaps.
78. First, for any major buildings issue in the High Court and serve a certificate as required under CPR 55.3(2) explaining the reasons why it is appropriate to start in the High Court:
- a. the subject matter – major building and right to protest;
 - b. the extent of the occupation - large numbers of people;
 - c. the way Occupy type occupations have been dealt with recently – mostly in the High Court;
 - d. the suitability of HC enforcement powers – and the increased willingness of the police to assist HC enforcing authorities (compared to the position with County Court bailiffs).
79. Second, ensure that there is strict compliance with all the requirements of CPR55. More haste often means less speed – see the position in *Sun Street* where extreme expedition meant that some basic procedural requirements had not been complied with.
80. Third, “over-serve”. Whilst orders for substituted service under e.g. CPR6.15 are necessary and generally appropriate especially against persons unknown, in order to avoid third party A6 complaints late in the day (a standard protestor argument and one which was deployed at all stages in St Pauls and PSG) wide distribution of all documents is important.
81. Fourth, try to secure a named representative defendant. Limit the number of other defendants who are joined under CPR19. Whatever happens also proceed against persons unknown – to protect against a person claiming not to be aligned with either the representative defendant or the other defendants.
82. Fifth, over-prepare and frontload preparation, legal argument and evidence so as to reduce the risk of adjournments. Have answers to arguments based on procedural failings (*Sun Street*) and human rights (*Sun Street and St Pauls*) ready.
83. Sixth, do not negotiate in a way which suggests you are happy to tolerate a long term protest – negotiate on the basis that you are seeking to minimise harm pending court orders.

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