# The Impact of Secretary of State for Environment, Food and Rural Affairs v Meier

**Katharine Holland QC**

**Landmark Chambers**

## Introduction

1. In *Secretary of State for Environment, Food and Rural Affairs v Meier and others* [2009] UKSC 11 [2009] PLSCS 335 [2009] 49 EG 70 (CS), the Supreme Court decided that an order for possession could not be made in favour of a landowner in respect of areas of land that were wholly detached and separated, possibly by many miles, from the land occupied by the trespassers.

## The Facts

2.1 In 2007, a number of travellers who led a nomadic lifestyle established an unauthorised camp in Hethfelton Wood, near Wool, Dorset, one of numerous woods managed by the Forestry Commission on behalf of the Secretary of State for the Environment. The latter brought proceedings for possession against various named persons and "persons unknown". It sought possession not only of Hethfelton Wood but also of other woodland managed by the landlord in Dorset in an area approximately 25 miles by 10 miles. The aim was to prevent the travellers from moving to another area of woodland. The Commission also applied for further injunctions against the same parties restraining them from re–entering Hethfelton or entering the other woods.

**The First Instance Decision**

3.1 The claim first came before Mr Recorder Norman, who had to resolve three issues. The first was whether to grant an order for possession in respect of Hethfelton itself. The second issue was whether to grant an order for possession in respect of any or all of the other woods. The third issue was whether to grant an injunction restraining the defendants from entering on to all or any of the other woods.

3.2 The Recorder decided to grant an order for possession against the travellers in respect of Hethfelton. However, he refused to make any wider order for possession, or to grant the injunction sought. Although he accepted that he had jurisdiction to make such orders, he considered it inappropriate to do so primarily because the landowner had failed to consider the matters suggested by the 2004 Guidance before the current proceedings were begun. Paragraph 1 of the order drawn up to reflect this decision provided that "*[t]he claimant do forthwith recover the land known as Hethfelton Wood*".

**The Appeal to the Court of Appeal**

4.1 The Court of Appeal allowed an appeal and granted the relief sought. In doing so, it applied the earlier Court of Appeal decision in *Drury Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA Civ 200; [2004] 3 EGLR 85; [2004] 37 EG 142 that an order for possession against trespassers could, in appropriate cases, extend to land not forming part of or contiguous with or even near to the land occupied by the trespassers.

4.2 The order made by the Court of Appeal ordered that the Commission *"do recover"* the other woods, and that each of the defendants "*be restrained from entering upon, trespassing upon, living on, or occupying"* any of the other woods.

4.3 In her judgment, Arden LJ followed and applied the reasoning of the Court of Appeal in *Drury*.

She concluded that the evidence demonstrated that at least some of the defendants had set up unauthorised encampments on woods managed by the Commission in Dorset and that there was a substantial risk that at least some of the defendants would move onto other such woods once an order for possession was made in relation to Hethfelton.

4.4 Arden LJ also said, in disagreement with the Recorder, that any failure on the part of the Commission to consider the matters recommended by the 2004 Guidance before issuing the proceedings for possession of the other woods did not justify refusing to make such a wider order. This was essentially on the basis that, if there was any such failure, it could be considered when the wider order for possession was sought to be enforced. Pill and Wilson LJJ agreed. Arden LJ also considered that, for the same reasons, the Recorder had been wrong to refuse the injunction sought by the Commission and again Pill LJ agreed. However, Wilson LJ dissented on this point, on the ground that the Recorder had been entitled to refuse an injunction on the additional ground which he had mentioned, namely that, if he had made a wider order for possession, it would have been disproportionate to grant an injunction as well.

**The Appeal to the Supreme Court – A Summary**

5.1 The central question on the appeal to the Supreme Court was whether the court had the power to grant a possession order in respect of land of which the trespassers were not in occupation. The appropriateness of the injunctive relief was also in issue.

5.2 In summary, the Supreme Court held that a possession claim against trespassers involved the party entitled to possession seeking recovery of the land and there was therefore no legitimate basis for making a wider, precautionary order for possession in respect of land that the travellers had not occupied, but were merely threatening to occupy. In the subject case, it did not make sense to talk about the landowner recovering possession of land that was wholly detached and separated, possibly by many miles, from that occupied by the travellers. It could not be said that the latter occupied or possessed such land in any conceivable way and it was the landowner who continued to enjoy uninterrupted possession. A wider order for possession

would therefore require the travellers to do the impossible, namely to deliver up possession of land that they did not occupy and would purport to return to the landowner something that it had not lost, namely possession of land of which it had possession.

5.3 Although the concept of occupying part of a property in the name of the whole was well established and an order for possession could be made in respect of the whole of land of which the trespasser occupied part, that reasoning could not legitimately be extended to apply to land that was wholly distinct or miles distant from the occupied land. There was no justification for concluding that a wider order for possession could be made in respect of separate pieces of land, only one of which was occupied by trespassers, just because they happened to be in the same ownership.

5.4 Whether or not an injunction would be granted to restrain a person from trespassing would turn on the facts of each particular case. Where a trespass was threatened and particularly where it was being committed, and had been committed in the past, an injunction to restrain the threatened trespass would be appropriate unless there were good reasons to the contrary. The court should not make orders that it did not intend, or would be unable, to enforce. None the less, even in cases where there was little prospect of enforcing the injunction by imprisonment or sequestration, it might be appropriate to grant it if such a grant could have a real deterrent effect on the particular trespassers. In the subject case, there were no grounds for setting aside the injunction granted in the instant case.

**When can a possession order now be sought to extend further than the precise land occupied by a trespasser?**

6.1 In *University of Essex v Djemal* [1980] 1 WLR 1301, the defendant students, who had previously taken over, and been removed from, certain administrative offices of the University of Essex, had been occupying another part of the university buildings known as "Level 6". The Court of Appeal made an order for possession extending to the whole property of the university – in

effect, the whole campus. How are such facts to be dealt with following *Meier?*

6.2 The House of Lords seemed to consider that it would still be appropriate for an order for possession to be made in respect of the entire campus. However, the position in such situations was not made absolutely clear. Lord Neuberger said:-

> *"The notion that an order for possession may be sought by a claimant and made against defendants in respect of land which is wholly detached and separated, possibly by many miles, from that occupied by the defendants, accordingly seems to me to be difficult, indeed impossible, to justify. The defendants do not occupy or possess such land in any conceivable way, and the claimant enjoys uninterrupted possession of it. Equally, the defendants have not ejected the claimant from such land. For the same reasons, it does not make sense to talk about the claimant recovering possession of such land, or to order the defendant to deliver up possession of such land.*
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> ***This does not mean that, where trespassers are encamped in part of a wood, an order for possession cannot be made against them in respect of the whole of the wood (at least if there are no other occupants of the wood), just as much as an order for possession may extend to a whole house where the defendant is only trespassing in one room (at least if the rest of the house is empty).***
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> *However, the fact that an order for possession may be made in respect of the whole of a piece of property, when the defendant is only in occupation of part and the remainder is empty, does not appear to me to assist the argument in favour of a wider possession order as made by the Court of Appeal in this case. Self–help is a remedy still available, in principle, to a landowner against trespassers (other than former residential tenants).* ***Where only part of his property is occupied by trespassers, a landowner, exercising that remedy through privately instructed bailiffs, would, no doubt, be entitled to evict the trespassers from the whole of his property****. Similarly, it seems to me, bailiffs (or sheriffs), who are required by a warrant (or writ) of possession to evict defendants from part of a property owned by the claimant, would be entitled to remove the defendants from the whole of that property. But that does not mean that the bailiffs, whether privately instructed or acting pursuant to a warrant, could restrain the trespassers from moving onto another property, perhaps miles away, owned by the claimant.*
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> *Further, the concept of occupying part of property (the remainder of which is vacant) effectively in the name of the whole is well established – see for example, albeit in a landlord and tenant context, Henderson v Squire (1868–69) LR 4 QB 170, 172. However, that concept cannot be extended to apply to land wholly distinct, even miles away, from the occupied land. So, too, the fact that one can treat land as a single entity if it is divided by a road or river (in different ownership from the land) seems to me to be an irrelevance: as a matter of law and fact, the two divisions can sensibly be regarded as a single piece of land. Accordingly,* ***I have no difficulty with the fact that the possession order made at first instance in this case extended to the whole of Hethfelton, even though the defendants occupied only a part of it.***

***The position is more problematical where a defendant trespasses on part of land, the rest of which is physically occupied by a third party, or even by the landowner.*** *Particular difficulties in this connection are, to my mind, raised in relation to a wide order for possession in a claim within CPR 55.1(b). Such "a claim" may be brought "for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without … consent …". Given that such a claim is limited to "land … occupied only by" trespassers, it is not immediately easy to see how it could be brought, even in part, in relation to land occupied by persons who are not trespassers. And it is fundamental that the court cannot accord a claimant more relief than he seeks (although it is, of course, possible, in appropriate circumstances, for a claimant to amend to increase the extent of his claim, but that is not relevant here).*

***The Court of Appeal in University of Essex v Djemal [1980] 1 WLR 1301 nonetheless decided that a University could be granted a possession order under RSC Order 113 rule 1, which was (in relation to the issue in this case) in similar terms to CPR 55(1)(b), in respect of its whole campus, against trespassers who were squatting in a relatively small part, even though the remainder of the campus was lawfully occupied by academics, other employees, and indeed students. This was a thoroughly practical decision arrived at to deal with a fairly widespread problem at the time, namely student sit–ins. There was an obvious fear that, if an order for possession was limited to the rooms occupied by the student trepassers, they would simply move to another part of the campus.***

*As already mentioned, given that there is the alternative remedy of self–help, the court should ensure that its procedures are as effective as lawfully possible.* ***Nonetheless, there is obviously great force in the argument that the fact that areas of the campus in that case was lawfully and exclusively occupied by academic staff, employees and students should have precluded a claim and an order for possession in respect of those areas, both in principle and in the light of the wording of RSC Order 113 rule 1.***

***However, this is not the occasion formally to consider the correctness of the decision in Djemal [1980] 1 WLR 1301, which was not put in issue by either of the parties****, as the Secretary of State (like the Court of Appeal in Drury [2004] 1 WLR 1906) relied on it, and the appellants were content to distinguish it. Accordingly, the implications of overruling or explaining the decision, which may be far–reaching in terms of principle and practice, have not been debated or canvassed."*

6.3 Lord Rodger agreed with Lord Neuberger, as did Lord Walker who stated that the decision in *Drury* cannot be seen as simply an extension of *Djemal*, in which the facts were *"very different"*. Lady Hale considered that the remedy of a possession order was available to a party that was facing interference with the possession of its property. She seemed to consider that the decision in *Djemal* was correctly decided and that an order for possession should be made in such circumstances. She said:-

"*The defendants in this case are occupying only part of Hethfelton Wood. We can, I think, assume that the Forestry Commission are occupying the rest. They are carrying on their forestry work as best they can – indeed, one of their problems is that they are impeded from doing it because of the risk of harm to the vehicles and their occupants. Yet Mr Drabble, for the defendant appellants, has never resisted an order covering the whole of Hethfelton Wood, nor does he invite us to disagree with Djemal. Being a sensible man, he recognises that we would be disinclined to hold that if trespassers set up camp in a large garden the householder can obtain an order enabling them to be physically removed only from that part of the garden which they have occupied, even if it is clear that they will then simply move their tents to another part of the garden.*

....

*If we accept that the remedy should be available to a person whose possession or occupation has been interfered with by the trespassers, as well as to a person who has been totally dispossessed, a case like Djemal becomes completely understandable, as does the order for possession of the whole of Hethfelton Wood in this case. Nor need we be troubled by the form of the order, that the claimant "recover" the land. His occupation of the whole has been interfered with and he may recover his full control of the whole from those who are interfering with it."*

Lord Collins said:-

*"But in my opinion University of Essex v Djemal [1980] 1 WLR 1301 represented a sensible and practical solution to the problem faced by the University, and was correctly decided. I agree, in particular, that it can be justified on the basis that the University's right to possession of its campus was indivisible, as Lord Rodger says, or that the remedy is available to a person whose possession or occupation has been interfered with, as Lady Hale puts it. Where the defendant is occupying part of the claimant's premises, the order for possession may extend to the whole of the premises. First, it has been pointed out, rightly, that the courts have used the concept of possession in differing contexts as a functional and relative concept in order to do justice and to effectuate the social purpose of the legal rules in which possession (or, I would add, deprivation of possession) is a necessary element: Harris, The Concept of Possession in English Law, in Oxford Essays in Jurisprudence (ed Guest, 1961) 69 at 72. Secondly, the procedural powers of the court are subject to incremental change in order to adapt to the new circumstances: see, e.g. in relation to the power to grant injunctions, Fourie v Le Roux [2007] UKHK 1 [2007] 1 WLR 320, at [30]; Masri v Consolidated Contractors International (UK) Ltd (No.2) [2008] EWCA Civ 303, [2009] 2 WLR 621, at [182]."*

**When will an injunction be granted?**

7.1 Whether or not an injunction will be granted to restrain a person from trespassing on land will continue to turn on the facts of each particular case. The Supreme Court considered that

where a trespass was threatened (and particularly where it was being committed and had been committed in the past) an injunction to restrain the threatened trespass would be appropriate, unless there were good reasons to the contrary. Even though the court should not make orders that it did not intend (or would be unable) to enforce and even in cases where there was little prospect of enforcing the injunction by imprisonment or sequestration, it might be appropriate to grant an injunction if it would have a real deterrent effect on the particular trespassers. In the subject case, there were no grounds for setting aside the injunction granted and they therefore upheld the grant of an injunction. As Lady Hale recognised, an injunction is a useful means of support for a speedy possession order, with abridged time limits if appropriate.

7.2 It has generally been accepted that an injunction restraining trespass to land can only be enforced by sequestration or imprisonment. However, Lord Neuberger questioned whether this was correct. He said:-

> *"In the light of the terms of RSC Order 45 rule 5(1), this may very well be right. Certainly, in the light of the contrast between the terms of that rule and the terms of RSC Order 45 rule 3(1) and CCR 26 rule 16(1) (which respectively provide for writs and warrants of possession only to enforce orders for possession), it is hard to see how a warrant of possession in the County Court or a writ of possession in the High Court could be sought by a claimant, where such an injunction was breached.*
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> *However, where, after the grant of such an injunction (or, indeed, a declaration), a defendant entered onto the land in question, it is, I think, conceivable that, at least in the High Court, the claimant could apply for a writ of restitution, ordering the sheriff or bailiffs to recover possession of the land for the benefit of the claimant. Such a writ is often described as one of the "writs in aid of" other writs, such as a writ of possession or a writ of delivery –see for instance RSC Order 46 rule 1. Restitution is normally the means of obtaining possession against a defendant (or his privy) who has gone back into possession after having been evicted pursuant to a court order. It appears that it can also be invoked against a claimant who has obtained possession pursuant to a court order which is subsequently set aside (normally on appeal) – see sc46.3.3 in Civil Procedure, Vol 1, 2009. Historically at any rate, a writ of restitution could also be sought against a person who had gone into possession by force: see Cole on Ejectment (1857) pp 692–4. So there may be an argument that such a writ may be sought by a claimant against a defendant who has entered onto the land after an injunction has been granted restraining him from doing so, or even after a declaration has been made that the claimant is, and the defendant is not, entitled to possession. It may also be the case that it is open to the County Court to issue a warrant of restitution in such circumstances."*

7.3 The Supreme Court sent out a strong message that the present procedural rules governing the enforcement of injunctions against trespass are currently unsatisfactory. Lord Neuberger considered that the issues arising were ripe for consideration by the Civil Procedure Rules Committee. He considered that the precise ambit of the circumstances in which a writ or warrant of restitution could usefully be clarified and that it would be worth considering whether the current court rules satisfactorily deal with circumstances such as those which were considered in *Djemal*.

**Conclusion**

8.1 In summary, possession orders will still be granted in respect of the entirety of a property where a trespasser is only in occupation of part and the rest is unoccupied. Where the order for possession of an entire unit of property is sought where the trespasser is only in occupation of part and the remainder is occupied by others or the landowner, it is still likely that a Court will order possession of the entire property.

8.2 So, landowners should still be successful in obtaining possession orders in the following circumstances:-

- when a possession order is sought for an entire university campus where there is a student protest in only part;
- when a possession order is sought for an entire business park where there is a gipsy encampment on only one business unit;
- when a possession order is sought in respect of an entire residential property even where the trespassers are only occupying part of a garden;
- when land in the ownership of the landowner is divided by a road or river which is in different ownership but possession of both areas is sought.

**KATHARINE HOLLAND QC**