

Practice & Law



RESTRAINING PERSONS UNKNOWN

Protests Katharine Holland QC and Melissa Thompson explain the authorities that can be called upon to bring injunctions and possession orders against protesters

The latest in a long line of authorities on the law relating to the grant of injunctions and possession orders against protesters has categorically confirmed that human rights do not afford protesters the right to occupy private property so long as there are appropriate alternative means of expressing their views.

Ten years on from *Hampshire Waste Services v Persons Unknown* [2003] EWHC 1738 (Ch); [2003] PLSCS 217, the first case to recognise the court's jurisdiction to make orders against

"persons unknown" in the context of injunctions to restrain protest, demonstration and trespass situations, the recent case of *University of Sussex v Persons Unknown* [2013] EWHC 862 (Ch); [2013] PLSCS 84, considers and confirms the various principles, human rights-related and otherwise, applicable to this increasingly high-profile area.

The protest movement

Most readers will recognise *Sun Street Properties v Persons Unknown* [2011]

EWCA Civ 1672 and *The Mayor Commonalty and Citizens of London v Samede* [2012] EWCA Civ 160; [2012] PLSCS 40, cases resulting from the widely reported occupation of UBS's headquarters in central London and St Paul's Churchyard respectively by the Occupy London movement. There are many more examples.

In 2012, the Olympic Delivery Authority was targeted by protesters opposed to the development of a basketball facility for use during London 2012. Since 2010 and the



removal of the cap on student tuition fees leading to increases in the cost of higher education for students across the country, there have been waves of protests by students opposed to these. Sit-ins and more violent forms of direct action have taken place at universities including Birmingham, Sheffield, Sussex, SOAS, Goldsmiths and the LSE. Environmental protests are also on the increase. The “No Dash for Gas” campaign saw activists occupy an EDF-owned, gas-fired power plant in October 2012. EON, BAA and

others have been the targets of Climate Camp for Action who have scaled chimneys, taken possession of sensitive sites and caused severe disruption.

This is to name but a few. There will be new cases too. The *Financial Times* in September 2012 reported that, due to the economic climate, civil unrest is increasing and will not disappear any time soon.

In almost all the cases mentioned above, orders have been sought and granted against “persons unknown” pursuant to the jurisdiction recognised in *Hampshire Waste*.

Over time and in light of developments in other areas of the law, further issues have arisen on this type of case, been decided, re-examined and clarified. Increasingly, human rights issues are a factor and are being considered alongside traditional procedural and property law rules. The extent to which these permit protest has been the subject of much debate.

The scope and extent of injunction and possession orders has also been a contentious issue. Of particular note is the question of whether a possession order can extend to areas not actually occupied if there is a risk of protesters occupying these once evicted from the site that was originally occupied. This issue was eventually ruled on by the Supreme Court in *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] UKSC 11; [2010] 1 EGLR 169.

Procedural requirements and the willingness with which the courts are prepared to dispense with these have altered over time. Although the rights of landowners are ultimately being protected by the courts, recent cases have demonstrated the need for strict compliance with the rules in place for the obtaining of the necessary orders.

University of Sussex protest

Following an announcement by the University of Sussex of its plans to sell to private investors certain services provided on its campus, a large group of people opposed to these plans staged a sit-in and occupied one floor of a building on campus that was used for seminars, student services and conferencing. The university tolerated this situation for some time. Matters escalated, however, as a result of a national demonstration that took place at

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ONLINE THIS WEEK

LAW REPORT The Estates Gazette Law Reports are now available exclusively on EGI each week and in bound volume three times a year. This week we report *Stevens v Secretary of State for Communities and Local Government*.

the university on 25 March 2013, which led to riots, further parts of the campus being occupied and significant damage being caused to university property.

The university sought an interim injunction to restrain further trespass and also a possession order to bring to an end the occupation and wider protest. The activities of the protesters exceeded the terms and extent of any permission by which students were entitled to use the campus and as such they constituted a trespass.

As part of the possession proceedings, the university sought an order for an abridgement of time (ordinarily two days under CPR 55.5) for substituted service. Injunctive relief and an order for short and substituted service were granted. The following day a possession order was granted for the whole of the campus, save for the building originally occupied. In respect of this building, the protesters were afforded a short, additional period of time to prepare their claim.

At the adjourned hearing, the court refused an application by the protesters for a further adjournment. It was held that there was no arguable defence available to the protesters, nor was there any realistic prospect that one might be developed. The possession order was therefore extended to include the building originally occupied and to cover the entirety of the campus.

Human rights

The protesters in *Sussex* sought to resist the grant of a possession order in relation to the building originally occupied by claiming their protest was peaceful and quite separate from the violent protest that had taken place across the campus on 25 March 2013. Further, they argued that the making of a possession order would contravene their right to freedom of expression and association under Articles 10 and 11 of the European Convention on Human Rights.

The court rejected this argument, adopting the principles in the leading Strasbourg authority on this point, *Appleby v United Kingdom* (2003) 37 EHRR 38 and applied the domestic cases of *SOAS v Persons Unknown* [2010] PLSCS 303, *Sun Street* and *Samede*, all of which upheld the rights of property owners to recover their property. Although the freedoms of expression and association were an important consideration, it was also important to have regard to the university's property rights under Article 1 of the First Protocol of the Convention.

Neither Articles 10 nor 11 of the Convention provided a general freedom to exercise rights to freedom of expression and association on private land. It was only in exceptional circumstances where the

KEY PASSAGES

Appleby v United Kingdom (2003) 37 EHRR 38

"[Article 10] notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. Whilst it is 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..."

The Mayor Commonalty and Citizens of London v Samede [2012] EWCA Civ 160

"As the judge [in *Appleby*] recognised [the proper approach to be adopted in relation to protest] will normally depend on a number of factors. In our view those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land and the extent of the actual interference the protest causes to the rights of others including the property rights of the owners of the land and the rights of any members of the public."

court considered that inability to exercise rights on private land would effectively prevent any exercise of these rights that a different view might be taken.

In *Samede*, the court considered the proper approach to be adopted when balancing the conflicting rights against the backdrop of *Appleby*. It held that each case is fact-sensitive but that factors to be taken into account were:

"the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land and the extent of the actual interference the protest causes to the rights of others including the property rights of the owners of the land and the rights of any member of the public".

In *Sussex*, having regard to the guidance in *Samede*, the court had no doubt that it was right to grant the possession order sought. The continuation of the protest, a trespass, constituted a breach of domestic law. The importance of the particular building occupied by the protesters was limited as there were a large number of opportunities and channels for students to express their views other than through the occupation of the campus building. Further, the occupation was depriving the

university and its other students of their property and facilities.

Possession order

Following the ruling of the Supreme Court in *Meier*, the scope and extent of possession orders is more limited than it was previously. Historically (by virtue of the judgment handed down by the Court of Appeal in *Drury v Secretary of State for the Environment Food and Rural Affairs* [2004] EWCA Civ 200; [2004] 3 EGLR 85) possession orders could cover land belonging to the claimant landowner which is wholly distinct from the land occupied to protect against the risk of this other land being occupied following an eviction from the site of the initial occupation. The court in *Meier* considered this to be too wide and overruled *Drury*.

The decision in *Meier* does not, however, prevent the granting of a possession order over land not occupied but at risk of future occupation provided this land forms part of and is contiguous with the land actually occupied, as it was held to be in *University of Essex v Djemal* [1980] 1 WLR 1301 (an authority expressly considered in *Meier*), *SOAS*, and *University of Sussex v Protesters* [2010] PLSCS 105.

In the present *Sussex* case, it was clear on the evidence that the protesters, as part of a single protest, had moved between different parts of the campus and would continue to do so if not prevented by a possession covering the entire campus and it was therefore right to make such an order.

Procedural points

Since the decision in *Sun Street*, the courts are less willing to abridge time for service of possession proceedings and require that very clear notice is given to protesters of orders made and hearings scheduled, in order to allow them the time and opportunity to prepare a case. It now appears to be good practice on service to draw express attention to contact telephone numbers and key details in a covering letter or at least in a document capable of being easily identified amongst a larger bundle of court papers.

Consolidated thinking

After 10 years and much consideration of the legal principles associated with protests, demonstrations and trespass situations, the cases are now being more consistently decided, with few apparent new points open to debate. Given the ongoing risk of protest affecting an increasingly wide range of landowners, it is surely welcome that so much of the legal groundwork has already been done.

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