

Dealing with mass protests

Thomas Jefferies

1. Mass protests raise particular issues, usually require very urgent action and adapted procedures. It is worth considering the available powers and methods of dealing with the problem.

Police powers

2. The police will often be involved in cases of mass protests. Most landowners would rather the police dealt with the problem, but it is often necessary for the landowner to get a possession order before the police will take action.
3. The police have certain express powers to deal with trespass under the Criminal Law Act 1977. Section 7 provides an offence where a trespasser fails to leave after being required to do so by a **displaced residential occupier** or a “protected intending occupier”. Section 9 creates an offence of trespassing on diplomatic premises.
4. In addition there is an offence of **aggravated trespass** in s68 of the Criminal Justice and Public Order Act 1994:

“68.— Offence of aggravated trespass.

(1) A person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does there anything which is intended by him to have the effect—

- (a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity,
- (b) of obstructing that activity, or
- (c) of disrupting that activity.

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69.— Powers to remove persons committing or participating in aggravated trespass.

(1) If the senior police officer present at the scene reasonably believes—

- (a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land ; or
- (b) that two or more persons are trespassing on land and are present there with the common purpose of intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity, he may direct that person or (as the case may be) those persons (or any of them) to leave the land.

(2) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails to leave the land as soon as practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

..

5. Section 61 of the 1994 Act creates an offence where people **trespass with the intention of residing** there:

61.— Power to remove trespassers on land.

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

...

6. There are further provisions dealing with caravans (section 62A to E) and raves (sections 63 to 66)
7. Apart from these specific cases, section 10 of the Criminal Law Act 1977 probably provides the main justification for a police presence, and at the same time demonstrates the need for a possession order:

10.— Obstruction of enforcement officers and court officers executing High Court or county court process .

(A1) A person is guilty of an offence if he resists or intentionally obstructs any person who—

(a) is an enforcement officer, or is acting under the authority of an enforcement officer; and

(b) is engaged in executing a writ issued from the High Court.

(1) Without prejudice to section 8(2) of the Sheriffs Act 1887 but subject to the following provisions of this section, a person is guilty of an offence if he resists or intentionally obstructs any person who is in fact an officer of a court engaged in executing any process issued by the High Court or by any county court for the

purpose of enforcing any judgment or order for the recovery of any premises or for the delivery of possession of any premises.

(2) Subsection (1) above does not apply unless the judgment or order in question was given or made in proceedings brought under any provisions of rules of court applicable only in circumstances where the person claiming possession of any premises alleges that the premises in question are occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his.

..
(5) [...] ⁵ [[An] ⁵ enforcement officer] ⁶ or any officer of a court may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

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(6) In this section—

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003;

“officer of a court” means—

(a) any sheriff, under sheriff, deputy sheriff, bailiff or officer of a sheriff; and

(b) any bailiff or other person who is an officer of a county court within the meaning of the County Courts Act 1984.

Injunctions

8. There is no doubt that the court has jurisdiction to grant an interim injunction which, if complied with, has the same effect as an order for possession. See *Manchester Corporation v Connelly* [1970] 1 Ch 420, in which an order was made against gypsies in the following terms

"be restrained until trial of this action or further order by themselves their respective servants or agents or otherwise from knowingly entering or remaining or causing or permitting motor vehicles caravans or other vehicles or movable dwellings to be placed or remain upon any vacant land belonging to the plaintiffs and in particular....."

9. In *Meier* the injunction was in the following terms

“that the defendants Patrick Connolly [and 22 named defendants] be restrained until trial of this action or further order ... from knowingly entering or remaining or causing or permitting motor vehicles caravans or other vehicles or movable dwellings to be placed or remain upon any vacant land known by them or which reasonably should have been known by them to belong to the plaintiffs and in particular the plaintiffs' land

bounded by ... in the City of Manchester but the operation of this injunction to be suspended until noon on Monday, December 22, 1969."

10. In the case of a threatened protest by an organisation which is yet to occur, it would be hard to justify not giving two clear days notice as required under CPR part 23.
11. Where the trespass has begun, the landowner should act promptly if he wants to justify going ex parte, and needs to justify why the application is so urgent that the normal Part 55 claim against trespassers cannot be used.
12. The landowner will have to show that damages are not an adequate remedy. In the case of unidentified trespassers, or individuals, it will usually be the case that they will not be good for any award of damages. In the case of an organisation such as Greenpeace, it will be necessary to explain why damages are not sufficient. Usually the type of disruption is such that damages are very hard to quantify.
13. Where there is no defence, the court will grant the injunction without considering the balance of convenience. See *Manchester Corporation v Connelly, above*.
14. The Applicant has to justify, in the usual way, why the injunction is required urgently, why notice cannot be given. It will not therefore be appropriate if the landowner has waited some days before taking action.
15. An injunction can now be granted against persons unknown. The development of such injunctions was assisted by our own Katherine Holland QC in *Hampshire Waste Services v Persons Trespassing upon Incinerator Sites* [2003] EWHC 1738. Morritt VC held that the requirements were

"the description used must be sufficiently certain so as to identify both those who are included and those who are not. If that test is satisfied, then it does not seem to me to matter that the description may apply to no one or to more than one person, nor that there is no further element of subsequent identification whether by service or otherwise"

The two points are that it seems to me to be wrong that the description of the defendant should involve a legal conclusion such as is implicit in the use of the word "trespass". Similarly, it seems to me to be undesirable to use a description such as "intending to trespass" because that depends on the subjective intention of the individual which is not necessarily known to the outside world and in particular the claimants, and is susceptible of change.

16. In *Hampshire Waste* the original description of the Defendants was

Persons intending to trespass and/or trespassing upon incinerator sites at”, and there follow the six addresses, “in connection with the ‘Global Day of Action Against Incinerators’ (or similarly described event) on or around 14 July 2003”.

17. The revised wording which was approved was as follows:

“Persons entering or remaining without the consent of the claimants, or any of them, on any of the incinerator sites at”, and then addresses 1 to 6 are set out, and concluding “in connection with the ‘Global Day of Action Against Incinerators’ (or similarly described event) on or around 14 July 2003”

18. Likewise in *South Cambridgeshire DC v Persons Unknown* [2004] EWCA Civ 180 the original and revised description of the Defendants were

“Persons unknown (being persons other than those listed in the Schedule to the claim form) proposing to deposit hardcore and/or to station caravans and/or to occupy existing caravans on land at Victoria View, Smithy Fen, Cottenham, Cambridge.”

“Persons unknown (being persons other than those listed in the Schedule to the claim form) causing or permitting hardcore to be deposited, caravans, mobile homes or other forms of residential accommodation to be stationed, or existing caravans or other mobile homes to be occupied on land at Victoria View, Smithy Fen, Cottenham, Cambridge.”

19. An injunction has the following advantages

- a. It can be granted without notice
- b. It can be granted very urgently, without any documents other than an order in extreme cases;
- c. It is appropriate where the Defendants have not taken possession, but for example have or threaten to stray onto a site for a short period
- d. It can be tailored to the specific requirements of the case, and may go beyond preventing entry. For example, it might prevent
 - i. obstructing entry by the landowner
 - ii. bringing things onto the land
 - iii. damaging plant and equipment on the land
- e. The risk of sequestration for breach of an injunction can be a useful deterrent against organisations with assets.

20. It has various disadvantages

- a. It is not enforceable by writ of possession, at present at least. As a result, the sheriff will not enforce it, and the police may not be willing to act on

it. In one case I was involved in, the police were however willing to remove trespassers from Kingsnorth power station on the basis of an injunction rather than a possession order. So it is worth discussing with the police what they require;

- b. Enforcement requires committal against individuals, a remedy which is often of little practical use, or too heavy handed.
- c. The proceedings need to be resolved, either by summary judgment or discontinuance. It is usually pointless to spend money on an application for summary judgement. Discontinuance requires permission of the court (38.2) if an injunction has been granted. It would normally be sought on terms that there were no order as to costs given that the proceedings have become academic. See 38.6 and White Book Notes.

Possession claims

- 21. In most cases a claim for possession against trespassers will be the best route to adopt. But in cases of mass trespass, the usual procedure needs modifying to obtain urgent relief.

High Court or County Court

- 22. A normal possession claim against trespassers must be started in the county court for the district in which the land is situated-See Civil Procedure Rules (CPR) Rule 55.3 (1). The High Court can also hear a claim if the claimant certifies that there are good reasons. The Practice Direction cites as an example the case where there is a substantial risk of public disturbance or of serious harm to persons or property which require immediate determination. PD55 Para 1.3. The value of the property and the amount of any financial claim may also be relevant circumstances. PD1.4.
- 23. The great advantage of proceeding in the High Court is that judges are available night and day and at short notice.

Service

- 24. The normal procedure is that the court fixes a hearing date when it issues the claim, and the claim form, particulars of claim and witness statements must be served not less than 5 days before the hearing in the case of residential land, and not less than 2 days in other cases. CPR 55.5. Service is usually effected by attaching copies of the documents to the main door, posting them through the letter box or fixing the documents to stakes placed on the land. CPR 55.6

25. In cases of urgency however, the procedure can be speeded up considerably. The court can abridge time for service and for the hearing under CPR 3.1(2) (a), and is willing to do so in cases of real urgency. The Practice Direction (PD55A 3.2) gives the following as examples

Particular consideration should be given to the exercise of this power if:

(1) the defendant, or a person for whom the defendant is responsible, has assaulted or threatened to assault:

(a) the claimant;

(b) a member of the claimant's staff; or

(c) another resident in the locality;

(2) there are reasonable grounds for fearing such an assault; or

(3) the defendant, or a person for whom the defendant is responsible, has caused serious damage or threatened to cause serious damage to the property or to the home or property of another resident in the locality.

26. These indications are not exhaustive. In practice judges will shorten the time limits drastically if there is real urgency of any sort. I have experience of a case where the Court abridged the time for service to 1 hour prior to the hearing, and fixed the hearing for the same day.

Alternative service

27. An application can be made under CPR 6.15 for an order permitting service by an alternative method or at an alternative place, or for an order under 6.15(2) that *“steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service”*.

28. The order must specify (6.15(4))

(a) the method or place of service;

(b) the date on which the claim form is deemed served;

29. The Practice Direction gives some examples of alternative methods of service at 9.3:

(2) an application to serve by sending a SMS text message or leaving a voicemail message at a particular telephone number saying where the document is must be accompanied by evidence that the person serving the document has taken, or will take, appropriate steps to ensure that the party being served is using that telephone number and is likely to receive the message; and

(3) an application to serve by e-mail to a company (where paragraph 4.1 does not apply) must be supported by evidence that the e-mail address to which the document will be sent is one which is likely to come to the attention of a person holding a senior position in that company.

30. In one case I was involved in, service was permitted by broadcasting a message through a loudhailer from a helicopter. No doubt service by text, email, message board and tweet will become popular. Be creative.

Can service be dispensed with altogether?

31. It was held in *Manchester Corporation v Connelly* [1970] 1 Ch 420 that a possession order could not be made by interim order, only by final order.

32. The CPR does, however, allow the Court to dispense with service of a claim form in “exceptional circumstances”. See CPR 6.16. Although this rule does give the court a discretion to dispense with service in a trespasser case, it is considered unlikely to be appropriate. The authorities were reviewed and summarised as follows by Neuberger LJ in *Kuenyehia v International Hospitals Group Ltd* [2006] EWCA Civ 21 at 26 (my emphasis):

First, it requires an exceptional case before the court will exercise its power to dispense with service under r.6.9 , where the time limit for service of a claim form in r.7.5(2) has expired before service was effected in accordance with CPR Pt 6 . Secondly, and separately, the power is unlikely to be exercised save where the claimant has either made an ineffective attempt in time to serve by one of the methods permitted by r.6.2 , or has served in time in a manner which involved a minor departure from one of those permitted methods of service. Thirdly, however, it is not possible to give an exhaustive guide to the circumstances in which it would be right to dispense with service of a claim form.

33. It cannot be expected that the court will deprive trespassers of all right to be heard, however unlikely it is that they would actually appear.

13 April 2010

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