

CPR Part 55

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Sorry seems to be the hardest word

Procedural law is dull

(but important: see the analogous area of injunctions against protestors
and *Birmingham CC v Afsar and others* [2019] EWHC 1560 (QB))

Part 55 and trespassers

Who is a trespasser?

“A possession claim against trespassers” means a claim 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 the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not;

Permission can have come from an intermediate landlord

Tenants and former tenants exempted

But terminated license would be a trespasser

Where do you issue the claim?

- Claim usually started in County Court – CPR r. 55.3
- When can you go to the High Court?
 - See PD 55A and Practice Note relating to Possession Claims Against Trespassers issued by the Chief Master and Senior Master on 30 September 2016
 - “there is a claim against trespassers where there is a substantial risk of public disturbance or of serious harm to persons or property which requires immediate determination”
 - Has to be an immediate or present risk, not a hypothetical future one: *Enfield LBC v Phoenix* [2013] EWHC 4286 (QB)
 - Need a certificate of reasons explaining why these conditions are met

Claim Form

Claim form – N5

- Must identify the land.
- Must state whether it is residential property.
- Must explain basis for possession
- Must give details of any third party interest (mortgage or tenancy)
- Must give details of those believed to be in possession and how they came to be in possession without consent
- May refer to “persons unknown” but try to describe in sufficient detail

Hearing date & service of papers

Hearing date usually quite prompt but remember

- Must serve claim form, PoC and w/s at least 5 days before the hearing (residential property) or 2 days before the hearing for other types of property.
- Remember the special rules for “persons unknown”
 - attach copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible;
 - if practicable, insert copies of those documents in a sealed transparent envelope addressed to “the occupiers” through the letter box;

or

- place stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to “the occupiers”.

[If court to serve then you must provide the plastic envelopes and stakes]

See also *Sun Street Property Ltd v Person Unknown* [2011] EWHC 3432 (use of text messages etc)

Hearing

No requirement for D to provide defence in advance

- be prepared for anything!
- Make sure you can prove proper service (photos, certificate of service, w/s etc)

Enforcement

Consider transfer to the High Court for enforcement

Note that the problems re: notice etc that were so troublesome in *Partridge v Gupta* [2017] EWHC 2110 (QB) do not apply to trespassers

If the break back in then get a writ of restitution and/or an injunction

Thank you for listening

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