

Unlawful interference with land

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Overview

- Actions to recover possession (CPR 55)
- Injunctive relief
- Other options
- Focus on Persons Unknown

Trespass 101

- Civil wrong (mostly)
- Actionable per se
- Entering and/or remaining on land without the consent (whether express or implied) of the person entitled to possession of the land

Recovery of possession

- The Claimant must have the right to possession before being able to recover possession of the land (eg. freeholder, leaseholder entitled to possession)
- Physical recovery is possible, but be cautious: Criminal Law Act 1977, s6
- CPR 55

CPR 55

- *a 'possession claim against trespassers' means a claim for the recovery of possession 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 (CPR 55.1(b)) **Emphasis added***
- *where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against 'persons unknown' in addition to any named defendants (CPR 55.3(4))*
- Do more than just PU, eg. 'Person(s) Unknown entering onto, remaining on and/or occupying land at [x] without consent'

CPR 55.6

- *Where, in a possession claim against trespassers, the claim has been issued against 'persons unknown', the claim form, particulars of claim and any witness statements must be served on those persons by... (CPR 55.6)*
- CPR 55.6 applies to 'a possession claim against trespassers'. If you do not fall squarely within the definition at CPR 55.1(b), you will not benefit from CPR 55.6, and the usual CPR 6 rules on service apply – consider the need for an alternative service order under CPR 6.15 and CPR 6.27
- Pay close attention to the drafting of any alternative service order

CPR 55 procedure

- No specific pre-action protocol
- High Court or County Court? See CPR 55.3(2), CPR 55.5(3), PD 55A para 1.3 and the relevant practice note
- Cannot use the possession claims online procedure (PD 55B para 5.1)
- N5 claim form and N121 particulars of claim
- The particulars of claim must be filed and served with the claim form (CPR 55.4)
- Witness statements in claims against trespassers must be filed and served with the claim form (CPR 55.8(5))

CPR 55 procedure

- Timing of service of claim form and particulars of claim is dealt with by CPR 55.5(2) (not less than 5 days before the hearing if residential and not less than 2 days before the hearing for all other property) (note: 'days' means 'clear days' as per CPR 2.8)
- Consider PD 55A 3.1 to shorten time
- Certificates of service (CPR 55.8(6))
- Defendant trespassers need not respond (CPR 55.7)
- The hearing – either final disposal or directions
- Possession orders against trespassers should be an immediate order for possession

CPR 55 interim possession order (IPO)

- CPR 55 part III and PD 55A part III
- Checklist CPR 55.20 and CPR 55.21:
 - Can only be used in a possession claim against trespassers
 - Must be recovering a 'premises' (as defined in the Criminal Law Act 1977, s12)
 - Claimant must have an immediate right to possession both when making the claim and through the period of the alleged unlawful occupation
 - Application must be made within 28 days of the date on which the claimant first knew or ought reasonably to have known, that the defendant(s) was in occupation
 - Defendant(s) must have **entered** the land as a trespasser
 - Possession only, not damages

CPR 55 IPO procedure

- PD 55A para 9.1 – N5 claim form, N130 application notice and written evidence
- Claimant must serve (in accordance with CPR 55.6(a)) the above **and** a blank N133 (form for the Defendant's witness statement) within 24 hours of issue (CPR 55.23)
- Certificate of service (CPR 55.23(3))
- In deciding whether to grant an IPO, the Court will have regard to whether the claimant has given, or is prepared to give, the undertakings at CPR 55.25(1)

CPR 55 IPO

- The Court will make an IPO if it is satisfied that service of the N5, N130 and N133 has taken place, the requirements in CPR 55.21(1) are satisfied and the claimant's undertakings are adequate
- IPO will be in the form N134
- Final hearing to be listed not less than 7 days after IPO made
- Claimant must serve the IPO within 48 hours with the claim form and evidence in support (CPR 55.26) and file a certificate of service before the final hearing (CPR 55.27(1))

Benefits of an IPO

- Quick recovery of possession
- Requires the defendant to vacate within 24 hours and cannot return within 1 year without permission
- Power of arrest and criminal sanctions (Criminal Justice and Public Order Act 1994, s76)

When to seek injunctive relief

- Precautionary injunctions
- Where the cause of action relating to the interference cannot underpin a possession action
- Where the interference stops short of occupation

Note: there is no special procedure like CPR 55 – the normal rules of civil litigation apply

Injunctive relief against Persons Unknown

Recent significant change in the law: ***London Borough of Barking and Dagenham & Ors v Persons Unknown & Ors* [2022] EWCA Civ 13**

- the Court may grant final injunctions that prevent persons who are unknown and unidentified at the date of the order occupying trespassing on land ('newcomers')
- Claimants should still identify the 'Cameron category 1' defendants (***Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6**) and serve them with the proceedings
- However, the Court of Appeal endorsed the ***Gammell*** principle – a newcomer will make themselves a party to the proceedings by knowingly doing the prohibited act

Serving proceedings and the order

- Consider the need for an alternative service order (see CPR 6.15 and CPR 6.27)
- *‘...any provision for alternative service should be such as can be reasonably expected to bring the proceedings to the attention of the defendant. But that is a standard to be applied prospectively.’*
(Cuciurean v Secretary of State for Transport & High Speed Two (HS2) Limited [2021] EWCA Civ 357 (at [60] Warby LJ)
- Serving the injunction order – does the ‘new’ CPR 81 require personal service of the order, or an order dispensing with personal service?

Other options

- Legal Aid, Sentencing and Punishment of Offenders Act 2012, s144
- Criminal Justice and Public Order Act 1994:
 - Sections 61 and 62
 - Sections 62A, 62B and 62C
 - Sections 68 and 69
 - Sections 77 and 78
- Police, Crime, Sentencing and Courts Bill 2021

Headline points

- Actions to recover possession against trespassers are governed by CPR 55
- Injunctive relief can be granted against newcomers on both an interim and final basis
- Depending on the nature of the interference and land, consider whether the Police and/or Local Authority may be able to assist

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