

Trespassers will be  
prosecuted.....or will they?





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## Introduction

Trespassers or “squatters” can present major issues for owners of commercial land and buildings. A trespasser is a person who enters or remains on land without the owner’s licence or consent and is applicable to a variety of people and groups, including for example:

- travellers with caravans, trucks and vans on large parcels of land;
- protestors, such as the ‘Occupy’ movement or persons opposed to “fracking”, nuclear power or animal rights issues;
- groups such as bohemians, drug users, illegal raves or the homeless occupying buildings as a home.

Issues caused by trespassers can go far beyond the land owner being unable to access their land. The presence of trespassers can prevent land owners from proceeding with construction and re-fit works, which often results in significant delay and costs penalties being incurred. There is also a high risk of damage being caused to property or land, including the risk of fly-tipping and the associated clean-up costs. To put this into perspective, the cost to land owners to clear sites following an unlawful occupation has been known to be in excess of £100k per site.

Land owners should also be aware that they could be liable in the event that a trespasser is injured whilst occupying their land/property.

Types of land and property typically targeted by trespassers include car parks, playing fields, construction sites, vacant offices, warehouses, factories and even art galleries. Land owners should therefore take measures to secure these high-risk properties from the risks of unlawful occupation.

It is important for land owners to know their rights to remove trespassers and to follow the eviction process correctly, otherwise they could be subject to both civil and criminal sanctions.

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## Definition of a trespasser

A trespasser is a person who has no right to occupy land or property. They do not have

licence to enter or remain. They may have been let into property by somebody else, or they may have let themselves in whilst the property was empty, unoccupied or unsecured. This might be a criminal offence, but proving that a trespasser broke in is very difficult. A person who enters a shop has licence from the owner to do so. If however that licence is withdrawn the person is trespassing. There is no legal definition for squatter, but the terms are often used interchangeably.

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## Is trespassing a criminal offence?

On 1 September 2012, trespassing in residential properties became a criminal offence under section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, although that only applies to someone that entered without consent. A licensee of residential property holding over does not commit the criminal offence of trespassing. Trespassing on commercial land is however not a criminal offence and trespassers will not be prosecuted save in some limited circumstances, for example where a trespasser threatens an occupier with violence to gain entry to the property.

Several sources indicate that since squatting in residential property became illegal, trespassers have focused their attention on commercial property, resulting in calls to criminalise all trespassing.

However, as it stands, commercial land owners experiencing problems with trespassers must seek alternative remedies.

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## Prevention methods

No land owner wants to encounter trespassers and as a starting point should consider all possible deterrents.

Traditional means to discourage trespass was to build a moat or a wall around property or land. Nowadays owners also use other deterrents such as large concrete blocks to prevent vehicles accessing land, or steel shutters over entrances and windows or “property guardians” (which itself is a risk) or sophisticated security systems and CCTV or the good old fashioned security guard. A land owner should consider carefully what deterrents may work to protect their

land or property, as a small investment when property becomes vacant could save significant costs of removal, clearance and repair at a later stage.

However, and despite the best laid plans, land and property are often targeted by trespassers who move from site to site and always know where the next vacant land or building is. In those circumstances, there are various options available to the land owner to remove trespassers.

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## Self Help

Under common law, a land owner has a right to remove trespassers, which is often referred to as a “self-help” remedy. This consists of the use of “reasonable force” to remove trespassers. There is little judicial guidance on what is reasonable force and each case is judged on its own facts. What is reasonable force is subjective and land owners run the risk of exceeding the threshold, which could result in prosecution for assault.

Trespassers often display notice that they have “squatters rights” referring to Section 6 Criminal Law Act 1977 which states that it is a criminal offence for any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person provided that—

- a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
- b) the person using or threatening the violence knows that that is the case.

It is therefore possible to recover possession if no trespasser is present on the land or buildings and reasonable force may be used but generally we advise against using force, reasonable or otherwise to secure possession.

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## Can the police help?

Section 61 of the Criminal Justice and Public Order Act 1994 (CJPOA), provides the Police with the power to direct the removal of trespassers (from land but not buildings) where the land owner has asked them to leave, and:



- any trespasser has caused damage to the land or property on the land; or
- any trespasser has behaved in a threatening, abusive or insulting manner; or
- the trespassers have between them six or more vehicles on the land.

It is important to note that whilst these powers are available, there is no duty on the Police to take action and in practice the Police are often reluctant to intervene for various reasons including a lack of resources and regularly suggest that “it is a civil matter”.

In any event, if trespassers do go on to land and buildings without licence or consent, this should be reported to the Police, particularly as their assistance may be required at a later stage.

## Can the local authority help?

Sections 77 and 78 of the CJPOA, provide local authorities with powers to tackle trespassing. Under s77 the local authority may make a direction that trespassers have to leave land, and it is a criminal offence for trespassers not to comply with such a direction. Section 78 allows the local authority to apply to the Magistrates’ Court for an Order requiring the removal of trespassers and their property.

In principle these powers sound useful, but it will only be in exceptional circumstances that a local authority will act on behalf of a private land owner.

## Legal proceedings

### Possession Order

The most common method used for the removal of trespassers is civil legal action for possession. There are two options available when seeking possession:-

1. Interim possession order (IPO); and
2. Standard possession procedure.

### Interim possession order (IPO)

Under this procedure the land owner must meet a number of requirements and significantly the IPO procedure does not apply to open land and

the application needs to be made within 28 days of the land owner becoming aware of the unauthorised occupation.

The procedure requires two hearings, but the suggested benefits of this procedure are (1) speed and (2) the IPO may be enforced by the Police as failure to comply with an IPO is a criminal offence. However, in reality this procedure is rarely quicker than the standard procedure, it requires two hearings and importantly the Police are often reluctant to assist/enforce.

### Standard possession procedure

Like the IPO procedure, the standard possession procedure is governed by Part 55 of the Civil Procedure Rules, which states that the claim for possession must be brought in the County Court local to the property unless there is a substantial risk of public disturbance or of serious harm to people or property that needs to be addressed immediately, in which case the proceedings may be brought in the High Court of Justice.

If there a substantial risk of disturbance or of serious harm then proceedings should be brought in the High Court and the benefit is the speed of the process. The proceedings will be issued immediately with the hearing taking place within days of issue of the case. Contrast this with the County Court process where in most County Courts, there are no counter staff, it generally takes weeks for proceedings to be issued and the hearing, well that’s anyone’s guess!

If however there is no risk of disturbance or harm, then the proceedings must be issued in the County Court. Incorrectly issuing in the High Court may result in the proceedings being transferred to the County Court resulting in even greater delay.

Once issued the claim for possession must be served on the trespassers and there are strict procedural rules to be complied with, including for example if the claim includes possession of open land, then the legal documents must be placed in sealed transparent envelopes addressed to ‘the occupiers’ and attached to stakes in the land in places where they are

clearly visible.

At the hearing and subject to the Court being satisfied that the land owner has a right to possession and has complied with the rules in terms of service and venue for the hearing and the trespassers have no defence the Court should make an Order for possession requiring the trespassers to give up possession immediately.

If however the Trespassers have a defence to the claim, which appears to the Court to be substantial, the Court may adjourn the hearing and order directions to bring the claim to conclusion including allocation of the claim to one of the tracks (small, multi or fast), disclosure, exchange of witness statements and trial.

## Enforcement of the possession order

An Order for possession does not entitle the land owner to evict trespassers. Possession is obtained, unless the trespassers leave voluntarily, by executing the possession Order either by Warrant of Possession in the County Court or Writ of Possession in the High Court.

Obtaining a Warrant of Possession in the County Court is much like obtaining a possession hearing in the County Court – it’s slow, but cheap! On average it can take between 5-10 weeks (or more) to obtain an eviction date, although this depends on the specific County Court and the Bailiff’s diary.

Land owners who have obtained a possession Order in the County Court, may however avoid a further extended period of rent free occupation of the land or buildings by electing to transfer the proceedings up to the High Court of Justice for enforcement purposes.

A possession order obtained in the High Court or transferred for enforcement is executed by High Court Sheriff the benefit of which is speed. An eviction date can be obtained in days, rather than weeks, although we have, in some cases executed the possession Order on the same day it was granted. Enforcement by High Court Sheriff is more expensive than by County Court Bailiff. However, in weighing this up against the

However, in weighing this up against the costs associated with the continued occupation, in most cases, if not all, land owners will want to proceed with High Court enforcement.

## Defences

There are a limited number of defences which may either delay possession proceedings, giving the trespassers time to find alternative accommodation, or which may provide a complete defence to the possession claim.

### Claimant cannot prove ownership/right of possession

The land owner needs to prove that it has a right of possession. Generally that right is proven by production of Official Copies from the land registry showing the land owner's freehold or leasehold title.

However, a lease or tenancy granted to previous occupiers and which has not been properly determined might result in the claim failing as the land owner does not have a right to possession, the previous leaseholder/tenant has that right.

Similarly, if contractors are in possession at the time the trespassers go onto the land or buildings, then it is likely that the contractor has the right of possession and not the land owner.

### Procedural irregularities

In most cases, a procedural irregularity such as a failure to properly serve the proceedings or insufficient notice of the hearing will not provide a complete defence. The Court has, under its general case management powers the ability to vary rules and timescales and therefore a procedural defence will at best delay, but not prevent possession being obtained.

### Protection under the Human Rights Act 1988

Trespassers may seek to rely on a defence under Article 8 – the right to respect for one's private and family life, or Article 1 – the right to enjoy one's possessions and not be deprived of them.

Human Rights Act defences are only available where the land owner is a public authority and in any event such a defence on this basis alone is unlikely to succeed as the provisions of the Human Rights Act do not provide a trespasser with a right to a home. In *Malik v Fassenfelt* [2013] EWCA Civ 798, a case where trespassers established a home on private land, the Court of Appeal, in deciding whether or not the making of a possession Order against them was compatible with Article 8, held that possession was a proportionate means of achieving the legitimate aim of enabling the land owner to regain possession.

## Injunction Order

Where a land owner has a genuine concern and evidence to support that land or buildings may become occupied by trespassers the land owner may make an application for a "quia timet" injunction – an injunction granted in advance of, not during an actionable wrong to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong.

When considering whether to grant a quia timet injunction, the Court applies a two stage test:

1. is there a strong probability that, unless restrained by injunction, there will be a breach of the land owner's rights? and
2. if there was a contravention of the land owner's rights, would the harm be so grave and irreparable that, even if an injunction was granted at the time of the actual infringement, damages would be inadequate

The Court considered quia timet injunctions in the expedited case of *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 where in the absence of any trespassers Vastint applied without notice for an injunction against persons unknown entering or remaining on a large development site in Leeds. The Court decided that in the circumstances it was necessary and proportionate to grant an injunction to prevent persons entering the site without consent and with goods and equipment for a rave, or with a caravan, and/or in groups of three or more.

So, will trespassers be prosecuted? In most cases no, but land owners have various options available to prevent the occupation of land or buildings by trespassers and/or secure possession.

### For further information on this subject please contact:

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