



Dealing with unwanted persons on your land - some do's and don'ts to keep in mind

If there are people on your land who are not legally entitled to be there and are causing you or your company difficulties or disruption, there are remedies that can be sought from the court. One of the most effective immediate remedies is to obtain an order for removal or interdict (if in Scotland) or an injunction (if in England), which is a court order prohibiting or preventing someone from carrying out an unlawful act. Part of that process allows you to seek an interim interdict/injunction that can be obtained relatively quickly as a “holding” measure to provide immediate relief until a full consideration of the situation by the Court. The immediate steps that you take to respond to threatened or actual activity can make a real difference to the successful management of the situation. Below is a broad overview of the key factors to consider when seeking an interim order of this type and some do's and don'ts to keep in mind.

Tests

To prevent an anticipated wrong:

1. Is there a strong probability that the anticipated defendant would act in breach of the claimant's rights unless restrained and do you have evidence to support this?
2. Would the harm caused by such a breach be so grave that damages would be an inadequate remedy – for example are the damages you are likely to suffer of a nature that they will be very difficult to properly calculate?

To prevent an ongoing wrong:

1. Does the claimant have a legal right that it can enforce against the alleged wrongdoer?
2. Is there an ongoing wrong that infringes that right that cannot be compensated adequately in damages?

For an interim interdict/injunction:

1. Is there an obvious case/a serious issue to be tried?
2. Should the order be granted on the balance of convenience – i.e. taking an overall view, is the harm to you greater if the activity is allowed to go ahead than the harm to the defendant if is restrained?

Do's

- Make sure you have taken all reasonable and proper, practical steps to protect your property as this may be important in showing why the court order is required.
- Consider precisely what you are asking the Court to protect against and whether your evidence meets the relevant test to demonstrate the threatened or actual wrongdoing you are asking the Court to protect against.
- Clearly identify the persons you are seeking an order against. It can be more difficult to obtain orders against persons unknown, but making sure your description of them allows them to be confidently identified will help. If you do not know their identity, be sure to describe them as clearly as possible using simple non-legal terms - for example, by reference to the anticipated wrongdoing and in a way that is not so wide that it could include people who have not carried out any wrongdoing.
- Make sure your description of the order you are asking the court to grant is in simple and clear terms using ordinary language so that people who may not have a legal background will understand what is being ordered, what they may or may not do, and where. The order sought should be as focused as possible.
- Include geographical and time limits which are appropriate and proportionate to the problem.
- Prepare any evidence you have to assist the court in granting the order. This will often be a witness statement but can also include other evidence such as evidence of the persons carrying out the same unlawful act at other premises and information obtained from monitoring social and other media.
- A plan or map showing the location of the defendants or anticipated wrongful activity and the extent of your property will often be helpful.
- Make sure you update the Court if you obtain an order and then become aware of any material changes in the factual circumstances or law that might affect the position.

Don'ts

- Don't forget to comply strictly with the rules on serving any order you might get – these rules are different in Scotland and England – failure to do so may have significant consequences.
- In Scotland, service is usually effected in person, by Sheriff Officers/Messengers-At-Arms. There are limited alternative options, and if you need to serve the papers by any other means, you will need to seek permission from the court.
- In England, there is scope to obtain an order for alternative service. This permits you to propose an approach to the Court which is tailored to the particular circumstances and is often the appropriate approach in these circumstances; an application should be made along with the claim form.
- Make sure to serve the full claim papers on the defendants (and in accordance with your order for alternative service, if you have obtained one) as well as any interim interdict/injunction you might get - failure to do so is likely to mean you can't get the full order you seek against them.
- Don't ignore other potential remedies e.g. would damages make up for the wrongdoing? If so, the court will be reluctant to grant an interdict/injunction.
- Don't forget that you may be required to disclose documentation to the defendant and other parties. If you are seeking order on a "without notice" basis in particular, you will be expected to make "full and frank" disclosure which may mean providing information or documentation to the Court that is adverse to your case or that you would not want others to be aware of.

Key contacts



Valerie Allan
Energy Disputes
T +44 1224 267149
E valerie.allan@cms-cmno.com



Emma Pinkerton
Real Estate Disputes
T +44 20 7367 2065
E emma.pinkerton@cms-cmno.com



Claire Quinn
Energy Disputes
T +44 1224 261033
E claire.quinn@cms-cmno.com



Jessica Hurle
Real Estate Disputes
T +44 20 7367 2142
E jessica.hurle@cms-cmno.com

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