

It has become a regular occurrence to switch on the news and see reports of public protests in the UK, often involving high-profile campaigns focused on climate change and environmental issues. There is also a rising trend in urban exploration activities, where individuals and groups access private land for the purposes of exploration and adventure.

The tactics employed by large, organised groups such as Just Stop Oil, Extinction Rebellion and Insulate Britain have become increasingly extreme, ranging from blocking motorways, tunnelling under oil and other energy facilities, and disrupting major sporting events such as Premier League football matches, the World Snooker Championships in Sheffield and, most recently, the Premiership rugby final and the Ireland vs England cricket test match.

The increase in more sophisticated action has presented significant challenges for the Police, local authorities and other public bodies in preventing and responding to such incidents effectively. Although, it is worth noting the new powers under the Public Order Bill that commenced on 3 May 2023 and gave Police greater powers of arrest in respect of offences relating to public order, including protest action.

Faced with threats, it is essential for private landowners to protect their land and property, seeking legal protection through injunction proceedings in the civil courts to stop protesters and others from trespassing onto their sites and disrupting business operations. For example, in recent months, several major oil and energy companies have successfully obtained interim injunctive relief to restrain protesters from accessing land, with the ultimate sanction for those breaching such orders being criminal penalties for contempt of court.

This article provides a practical guide for obtaining civil injunctions to restrain unlawful access to land.

What Is a Civil Injunction?

In this context, a civil injunction is a legal order that seeks to prohibit individuals or groups from entering a specific area or property, including private land and buildings.

Protester action (or unlawful access to land by urban explorers) usually takes the form of persons entering onto large-scale sites without permission. Such individuals may cause criminal damage, disrupt business activity and restrict access to sites, potentially putting themselves in harm's way. In the case of urban explorers, typically photographs and videos of trespass onto sites are uploaded to social media pages.

Injunctions, in the context of protesters and urban explorers, are usually founded on the common law causes of action of trespass over land, nuisance and/or harassment.

In most protester cases, an urgent interim injunction application will be made, often without notice to the other party (e.g. known protesters or protester groups), to obtain a temporary injunction to prevent trespass occurring. Interim injunctions are usually granted in urgent cases where it is demonstrated that there is a risk of immediate harm occurring, such as upcoming protests threatening trespass or other civil disruption to the affected land.

In cases involving public protests, human rights issues often arise as the courts are required to balance the need to protect individuals and property with the right to protest and the right of free assembly and expression (under Section 12(2) of the Human Rights Act 1998). Careful consideration must be given as to whether, and how, to notify persons affected by interim injunction applications in advance.

Recently, various operators in the oil and gas industry have taken action to obtain interim injunctions in response to protester action or threat of action at their sites, including:

- **Essar Oil (UK) Limited, Stanlow Terminals Limited and Infranorth Limited** – Obtained an interim injunction on three separate sites, which expires on 11 May 2024.
- **Valero Energy Ltd** – Obtained an interim injunction in January 2023 for 12 months and three weeks.
- **Exolum Pipeline Systems** – Obtained an interim injunction in January 2023 for 12 months.

Further, National Highways, High Speed Two and local authorities have sought and obtained injunctions against protesters, which continue throughout 2023 and beyond in some cases.

Legal and Procedural Hurdles

The civil procedure rules and practice directions prescribe the requirements for making an injunction application, with many procedural hoops to jump through and pitfalls to be wary of for the uninitiated, including:

- **Notice of court proceedings** – Whether to give notice of court proceedings in advance and, if so, when, how and where to give notice.
- **Service of documents** – Methods of service, timings for service and what to do if the permission of the courts for alternative methods of service (e.g. by email or leaving documents at an address) is required.

- **Evidence** – What evidence in support of an interim injunction application is required.
- **Order** – The form of the injunction order and related warning notices (warning the individuals that an injunction has been granted).

The law in this area is evolving. The recent protester decision of *Shell UK Oil Products Ltd v. Persons Unknown* [2022] EWHC 1215 neatly summarises the key legal hurdles to be satisfied in each case, including whether:

1. There is a serious question to be tried.
2. Damages would not be an adequate remedy for the claimant, but a cross undertaking in damages would adequately protect the defendants, or
3. The balance of convenience otherwise lies in favour of the grant of the order.
4. There is a sufficiently real and imminent risk of damage (a tort being committed) so as to justify the grant of what is a precautionary injunction.
5. The prohibited acts correspond to the threatened tort. The injunction must only include lawful conduct if there is no other proportionate means of protecting the claimant's rights.
6. The terms of the injunction are sufficiently clear and precise.
7. The injunction has clear geographical and temporal limits.
8. The defendants have not been identified but are, in principle, capable of being identified and served with the order.
9. The defendants are identified in the claim form (and the injunction) by reference to their conduct.
10. The interferences with the defendant's rights of free assembly and expression are necessary for, and proportionate to, the need to protect the claimant's rights – articles 10(2) and 11(2) of the European Convention on Human Rights (ECHR), read with Section 6(1) of the Human Rights Act 1998.
11. All practical steps have been taken to notify the defendants – Section 12(2) of the Human Rights Act 1998.
12. The order does not restrain "publication", or, if it does, the claimant is likely to establish at trial that publication should not be allowed – Section 12(3) of the Human Rights Act 1998.

The burden is on the claimant to prove its case and discharge its obligation of full disclosure to the court. The process to obtain an interim injunction is prescriptive and typically extremely labour intensive, often requiring detailed legal proceedings and extensive factual witness evidence to be compiled at very short notice.

Defendants

Depending on the circumstances, there might be evidence of incidents that have taken place, or a threat of incidents, where certain individuals can be identified. If that is the case, such individuals will need to be named in the injunction proceedings, which necessitates giving notice of the proceedings to, and effecting service on, such individuals.

If defendants can be identified, steps should be taken to obtain the names and contact details of those individuals (such as email and home addresses). Steps taken could include instructing tracing agents or liaising with the Police (where the individuals have been arrested).

In our experience, cooperation with the Police can vary. In extreme circumstances, it may be necessary to seek a court order for the disclosure of information by the Police; see, for example, *Shell UK Oil Products Ltd v. Persons Unknown*.

However, it may not be possible to identify the defendants. If that is the case, the individuals will be named as "Persons Unknown" in the proceedings and evidence must be compiled to demonstrate that it has not been possible to personally identify any individuals.

Getting Prepared for Injunction Proceedings

Being able to move quickly when faced with the threat of protesters or urban exploration on sites is key. We have summarised some of the practical issues that landowners and businesses should be aware of.

Early preparation and collation of extensive and detailed information and documentary evidence prior to commencing proceedings is essential and increases the prospect of an injunction being granted.

Ownership of Land

The foundation of property injunction cases is to establish and clearly identify the land owned by the claimant over which an injunction is sought. The courts will require evidence of ownership together with threat of harm to all parts of the land that is the subject of the injunction, as interim injunctions are required to have geographical limits.

Equally, any parts of a claimant's site that are in third party ownership, and/or subject to separate leases or rights, must be identified. It is also important to identify whether these parts of a claimant's site are proposed to be included in the injunction. A clear plan (or plans), showing the extent of the land included in and excluded from the injunction, is essential.

Key questions to consider when framing the scope of a proposed injunction are: Which areas of land are impacted, or are likely to be impacted, by protester action? Do others occupy or operate from the site, and on what basis? Where are the main access points to the site and how do others, including emergency vehicles, access the site? What areas are likely to be subjected to protester action or a visit from urban explorers, and are those areas within your ownership or outside of it?

Security

Prevention is better than cure, and site security will often play a key role in deterring and responding to protesters and others threatening unlawful access to sites.

The court will want to know what steps have been taken to mitigate the risks of trespass and nuisance by the landowner. Taking reasonable steps to secure the site is essential, including potentially engaging specialist security firms experienced in dealing with such incidents to carry out a site risk assessment and to recommend any steps that could be taken to minimise unlawful access.

It can often be difficult at large-scale sites to protect the entirety of the site, but there may be other actions that can be taken, such as car patrolling, the implementation of CCTV, or the carrying out of dog patrols on foot. Records of all security steps taken should be compiled, including photographic evidence and the date on which the measures were implemented, together with the associated costs incurred.

Gathering Evidence

Efficient and comprehensive gathering of information is key to securing an interim injunction and will form the backbone of evidence to demonstrate the risk of harm to the court. Early engagement with other parties that may have been affected by similar trespass and protester incidents is a sensible starting point. The risk of potential harm based on recent incidents elsewhere can form a key part of the evidence base.

Evidence Base

You must compile records of all threats and protests that take place, including dates and times and who was involved, including:

- **Incident records** – Collate photographs, video evidence and CCTV footage of any protests taking place (and who those protesters are, if they can be identified). Include all threats and protests that take place, including dates and times and who was involved.
- **Communication records** – Keep a record of any emails or telephone calls received (with attendance notes) and any threats to employees.
- **Photographic and video evidence** – Collate photographs, video evidence and CCTV footage of any incidents that have taken place, including identifying individuals involved.
- **News media** – Collate media reports of incidents or threats relevant to the site, including relevant information relating to other incidents within the industry or generally.
- **Online media and social media** – Review social media sites that are widely used by protester and urban exploration groups. Collate all relevant social media posts relating to the site (and to the wider industry), including YouTube footage, Twitter, Facebook and Instagram posts. Screenshots should be dated and timed-stamped, and any information should include details of whose account the posts were made on, so that, if these posts are deleted in the future, they may still be used for evidential purposes.

The above evidence is inherently important to show to the court why an injunction is required.

Engagement With Police and Other Affected Parties

It is important to be kept abreast of the action that has taken place on other sites across the UK at businesses within the same industry. It is often significant if protesters/explorers have been on other sites; these incidents should be referred to in any court proceedings. Steps to engage with the Police at an early stage should also be taken. The Police will very likely be aware of other incidents in the locality and will often be willing and may be able to support a civil injunction application. In some cases, orders for disclosure of Police records have been sought from the court where such information has not been given voluntarily.

Business Disruption and Financial Impact

Consider your business type and what impact protest action may have upon it. What are the day-to-day risks both logistically and economically? Are there risks to employees and the wider community? Are there health and safety risks to be aware of? Are there any regulatory concerns? These issues will need to be explained further in witness evidence prior to proceedings being heard before a judge and so it is helpful, at an early stage, to consider these points.

You should consider implementing a clear public relations strategy to manage the implications of bringing injunctive proceedings and potential press and social media interest.

It is also important to identify, at an early stage, who in the business will be responsible for providing evidence to the court. It should be someone who has knowledge of the unlawful access to the site by protesters and/or urban explorers. Discussions should happen at an early stage so that that person understands the importance of giving witness evidence and the consequences of signing a statement of truth (when a person makes a statement of truth, they are confirming that they believe the facts stated in the document are true).

The wider team will also need to engage in the injunction process; if an action is brought against persons unknown, this will often require setting up a webpage on which legal documents can be published, and displaying several warning notices across the site. These steps will require assistance from the wider team.

Early Legal Advice

Timing is everything when it comes to obtaining interim injunctive relief. Claimants must be able to act quickly to evaluate prospects of success and identify what evidence is required to make out the case. Most of the work required for injunctive proceedings is front-loaded and requires extensive input both from the legal team and landowner/business making the claim.

There is a myriad of legal, procedural and evidential issues to consider in any case. Given the time pressures involved it is essential that an experienced legal team is assembled at the earliest stage to direct and manage the full injunction process. Our Real Estate Litigation team is widely experienced in property related injunctions, including against protesters and urban explorers and gaining access to land to exercise statutory powers (e.g. for utility companies). Please contact us if you require advice regarding obtaining an injunction on one or more of your sites.

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