

1.	Claimants
2.	Richard Joseph Jordan
3.	Third
4.	RJ10
5.	Date: 27 July 2020

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Claim No: PT-2018-000098

**B E T W E E N:**

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) HIGH SPEED TWO (HS2) LTD

Claimants/Applicants

-and-

(1) PERSONS UNKNOWN ENTERING OR REMAINING WITHOUT THE CONSENT OF THE CLAIMANT(S) ON LAND AT HARVIL ROAD, HAREFIELD IN THE LONDON BOROUGH OF HILLINGDON SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(2) PERSONS UNKNOWN SUBSTANTIALLY INTERFERING WITH THE PASSAGE BY THE CLAIMANTS AND THEIR AGENTS, SERVANTS, CONTRACTORS, SUB-CONTRACTORS, GROUP COMPANIES, LICENSEES, INVITEES OR EMPLOYEES WITH OR WITHOUT VEHICLES, MATERIALS AND EQUIPMENT TO AND FROM THE LAND AT HARVIL ROAD SHOWN COLOURED GREEN, BLUE AND PINK AND EDGED IN RED ON THE PLANS ANNEXED TO THE RE-AMENDED CLAIM FORM

(3) to (35) THE NAMED DEFENDANTS LISTED IN THE SCHEDULE TO THE ORDER OF MR DAVID HOLLAND QC DATED 22 JUNE 2020

(36) PERSONS UNKNOWN CUTTING, DAMAGING, MOVING, CLIMBING ON OR OVER, DIGGING BENEATH OR REMOVING ANY ITEMS AFFIXED TO ANY TEMPORARY OR PERMANENT FENCING OR GATES ON OR AT THE PERIMETER OF THE HARVIL ROAD SITE, OR DAMAGING, APPLYING ANY SUBSTANCE TO OR INTERFERING WITH ANY LOCK OR ANY GATE AT THE PERIMETER OF THE HARVIL ROAD SITE WITHOUT THE CONSENT OF THE CLAIMANTS

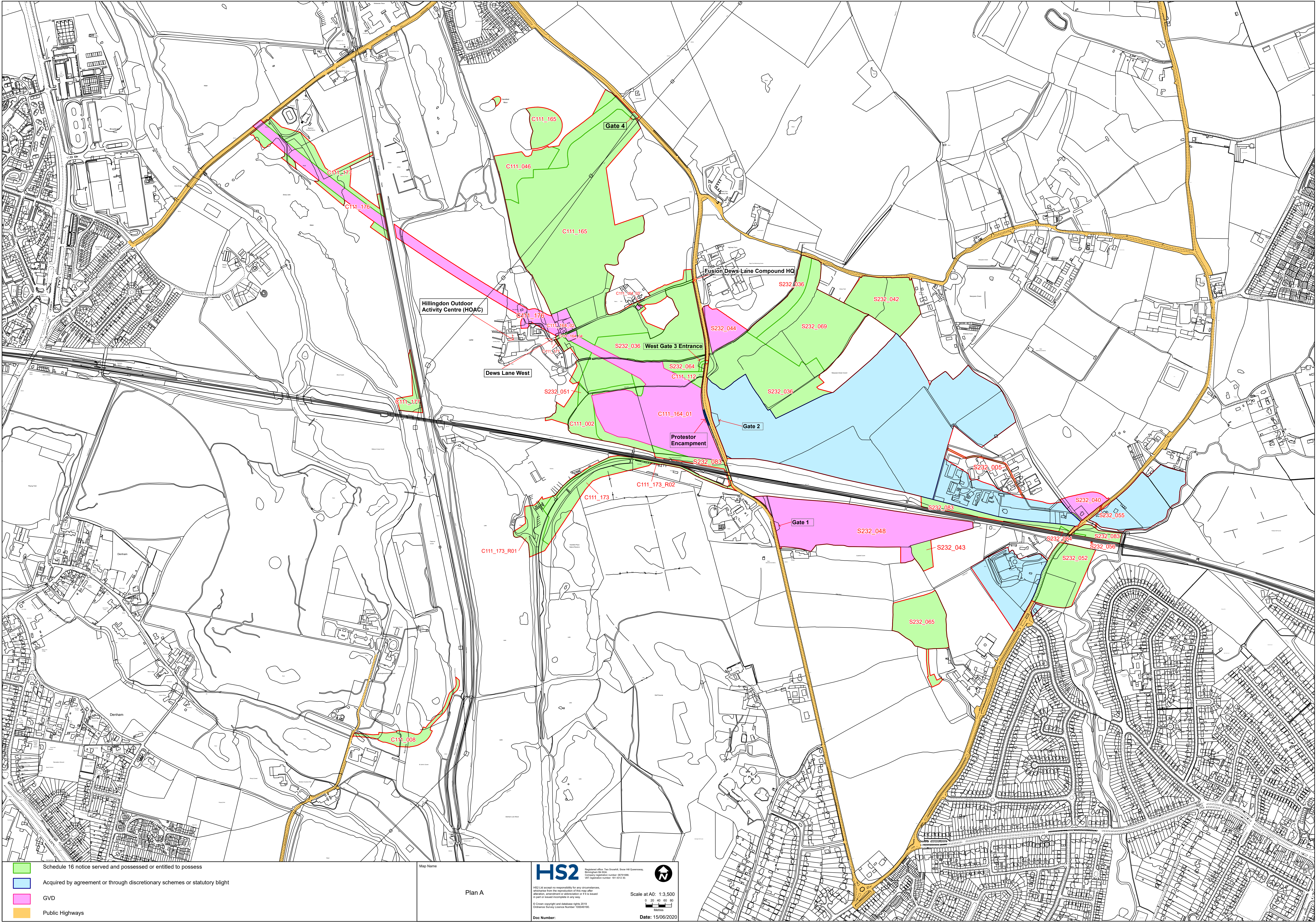
Defendants / Respondents

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**EXHIBIT "RJ10" TO THE  
THIRD WITNESS STATEMENT OF RICHARD JOSEPH JORDAN**

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Schedule 16 notice served and possessed or entitled to possess

Acquired by agreement or through discretionary schemes or statutory blight

GVD

Public Highways

Map Name  
  
Plan A

HS2

Registered office: Two Shovels, Stone Hill Quonset,  
Birmingham B4 6JA.  
Company registration number 06191886.  
VAT registration number 914 612 282

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Ordnance Survey Licence Number 100049190

Doc Number:

Scale at A0: 1:3,500

0 20 40 60 80

Metres

Date: 15/06/2020







Day Date:19/11/19 -- 07:00 -19:00		Night Dates 19/11//19 --20/11/19	
<b>OPERATORS</b>			
<b>DAYS 07:00/19:00</b>		<b>NIGHTS 19:00/07:00</b>	
Ricki Hogan	Prince	Frankie Mpoza	Mark Ripley
<b>DAILY CHECKS COMPLETE</b>			
<b>DAYS</b>		<b>NIGHTS</b>	
Yes/No	Yes	Yes	yes
Issues		Issues	
Signature RH	P	Signature FM	MR
<b>OPERATIONAL INCIDENTS</b>			
Brief synopsis required including Date time and location, person submitting IR.			
<p><b><u>0700 handed over from night shift</u></b></p> <p>0705 lock on in progress at compound c harvil road, tom and bill updated.</p> <p>0830 phoned police regarding harris fencing at Harvil road HQ being pushed down overnight 70 meters roughly police report number is 0926912/19 hs2 helpline also informed.</p> <p>16.20 MRV1 phoned they don't have oil in the 4X4 advised them to speak to eddie, dean and envision. Will phone us with an update.</p> <p>16.40 Sarah green approached Harvil road HQ Giving the Security there verbal abuse. Police and hs2 helpline informed urn is 4783/19.11.2019 incident report sent to persons required.</p> <p><b><u>19:00 Handover from day shift</u></b></p> <p>19:28 Call received from FRG Mobile to report that the gate at the Quanton cuttings site was taken off its mountings and placed to the side leaving the site insecure. Mike Perkins informed and he requests the FRG mobile attempt to re-attach it to the mount as he did the other day. Mike also mentions he suspects it is the contractors who are working on site as he caught them doing it and will contact the appropriate person to remedy the issue.</p>			



Messages.

1. We have a new incident report template Thomas Johnston wants us to use when we write a report on harvil road its on the desktop. Titled Harvil road incident report blank
2. Please ensure out of date information is removed from the handover document to prevent any confusion regarding tasks still required.
3. Ricky please see the email from Bill Kemp sent 19:00 19/11/19
4. Camera battery changes put through to AW5.
5. MPV1 informs SOC of a request from Bill Kemp to go to Harvil road on Wednesday.







Link to first video referred to at paragraph 6(iii) of Jordan 3:

[https://eversheds-sutherland.login-uk.mimecast.com/lfs/app/?branding=eversheds-sutherland#/landing?token=qKB9jltoPFe8c-9mN5EoE29c6R7Stuz7zPPCPH7u\\_Cd9VP5OcY-rn7RY4RnfOdz4VepeS-8Cp83XEQOJRHDBqbcEFngRuHZAS-40RWcrBfdHS-YBtw6Os-df6tzjvrCDTGAJfiPTDzF7H3JwEGfmc10uv63SQm2VxXyUWrKFBxeORf6PkiS4SVBBljy4R-pcyro9agnSpo-UzRx3SZNaVIFs4eTYca-hennDmPnmzUbfRVPIjvRND9A5z0FF3NPcXtpr0VxmawT2G7rkTKemQ1bBJ7u39wMBSKtwqD6gO2aqFcsxT0zfEqnWlau5mJmBZzc9lhdtfSXdcj68pOJT21SEhGMg5xH4tCgUX\\_8RX2Pf1Rkpldlnl1ACLm nBSChIKXJns1OpJ9Bunid1GGXwMA&recipient=jodiedbutler%40hotmail.co.uk&sender=jodiedbutler2%40eversheds-sutherland.com&go=download](https://eversheds-sutherland.login-uk.mimecast.com/lfs/app/?branding=eversheds-sutherland#/landing?token=qKB9jltoPFe8c-9mN5EoE29c6R7Stuz7zPPCPH7u_Cd9VP5OcY-rn7RY4RnfOdz4VepeS-8Cp83XEQOJRHDBqbcEFngRuHZAS-40RWcrBfdHS-YBtw6Os-df6tzjvrCDTGAJfiPTDzF7H3JwEGfmc10uv63SQm2VxXyUWrKFBxeORf6PkiS4SVBBljy4R-pcyro9agnSpo-UzRx3SZNaVIFs4eTYca-hennDmPnmzUbfRVPIjvRND9A5z0FF3NPcXtpr0VxmawT2G7rkTKemQ1bBJ7u39wMBSKtwqD6gO2aqFcsxT0zfEqnWlau5mJmBZzc9lhdtfSXdcj68pOJT21SEhGMg5xH4tCgUX_8RX2Pf1Rkpldlnl1ACLm nBSChIKXJns1OpJ9Bunid1GGXwMA&recipient=jodiedbutler%40hotmail.co.uk&sender=jodiedbutler2%40eversheds-sutherland.com&go=download)

The video is available via this link until **midnight on 17 August 2020.**

If you are having trouble accessing the video through the above link or require a copy of the video after 17 August 2020, please contact HS2's solicitors (Eversheds Sutherland (International) LLP) by email to [ShonaJenkins@eversheds-sutherland.com](mailto:ShonaJenkins@eversheds-sutherland.com).







## **The Authorised High Court Enforcement Officers powers when executing writs of Possession, CPO's or when evicting persons from land under Common Law:**

### **Enforcement of a Writ of Possession or Compulsory Purchase Order:**

The HCEO is a named officer appointed under the **Courts Act 2003**, and the **High Court Enforcement Officer Regulations 2004**, to act upon and enforce warrants under the **Compulsory Purchase Act 1965** and/or the **High Speed Rail Act (London to West Midlands) 2017**, and upon writs of possession issued from the High Court of Justice, to undertake the obligation to return the Land in the schedule to the warrants and writs vacant of all unlawful occupiers in accordance with the legislation.

Under the **Courts Act 2003, schedule 7 (4)(2a)(a)** the HCEO has, in relation to such warrants and writs, the duties, powers, rights, privileges and liabilities that a Sheriff of a county would have had at common law and, under **section 4 (4)**, these powers, rights and privileges also apply to a person acting under the authority of the relevant officer as they apply to the relevant officer.

### **Common Law Powers:**

High Court Enforcement Officers are able help landowners to repossess their land from trespassers without a prior eviction order. In doing so the landowner and the enforcement officer rely upon the common law remedy of expulsion. That is set out in **volume 97 of Halsbury's Laws of England 5th ed. at para.588**. (in the 4<sup>th</sup> edition, it may be found in volume 45). It reads:

*"If a trespasser peaceably enters or is on land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave may remove him from the land, using no more force than is reasonably necessary. However, if a trespasser enters with force and violence, the person in possession may remove him without a previous request to depart. An owner of property is also entitled to take reasonable steps to prevent trespassers from entering his property. If the force or violence used in turning out a trespasser is excessive, the person who used such force himself commits a trespass upon the person of the person removed. To justify the expulsion of a trespasser, the person who uses force must be in possession or acting under the authority of the person in possession.*

*If a trespasser erects a building on the land of another, the person who is entitled to the possession of the land may pull down the building, even though the trespasser is in it."*

*[Halsbury's Laws of England 5<sup>th</sup> edition, vol. 97, p.588]*



The common law principle as stated in Halsbury's is clear :

*"If a trespasser peaceably enters or is on land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave may remove him from the land, using no more force than is reasonably necessary."*

This would cover the case where the landowner is not in possession of the land but is entitled to possession, for example, a statutory authority acquiring the land in question under a CPO, having served Schedule 16 notices.

While the cases frequently cited as authority for this principle are cases where the person taking action is in possession, there are many cases which make clear that the remedies available against trespassers are available to a person entitled to possession or even occupation under a licence , even if they not in actually control or possession of the property, for instance in the case of *Manchester Airport plc v, Dutton* ([1999] 2 All ER 675) where the airport needed remove protestors from land of the National Trust which it had not occupied and was not in control of, in order to carry out work for the airport.

Moreover, the cases that Halsbury's cites as authority all involve the removal of a trespasser from a building of some kind which makes clear that the right is not limited to "open land". The cases cited are as follows:

*Hall v Davis* (1825) – this related to the defendant's removal of a servant from a house which the defendant possessed.

*Thomas v Marsh and Nest* (1833) – this related to stewards removing an individual from a music festival at a county hall after he tried to enter without a ticket.

*Shaw v Chairtie Esq* (1850) – this related to the removal of a butler from a house by the master of the household after the butler caused a disturbance.

*Jackson v Courtenay* (1857) – this related to church officials removing an individual who had previously been appointed as a clerk of a chapel from the vestry of that chapel.

*Hemmings v Stoke Poges Golf Club* (1919) – this related to the removal of a former employee of the golf club from a cottage provided during his employment.



These common law powers

- can only be used by the landowner;
- are used to regain possession of land;
- do not require the involvement of the courts;
- are enforced by the landowner and/or private bailiffs where necessary;
- do not provide any sanctions offence for the return of trespassers onto land.

All landowners can use their common law rights to recover land (i.e. the tort of trespass against property). This allows the person in possession of land to evict an individual from their land, seek damages for their trespass on their land, and/or seek an injunction to prevent the trespass from occurring again.

Case law has established that a trespasser who enters land peaceably is entitled to a request to leave the land before being forcibly removed, while a trespasser who has entered land with force and violence may be removed without a previous request to depart.

If the trespasser does not leave the land the possessor of the land may use no more force than is reasonably necessary to evict him or her. Private bailiffs [e.g. High Court Enforcement Officers] may be used to carry out the eviction. The issue of what is 'reasonable force' is a question of fact to be decided in each individual case, however it must be an honestly held belief that in the particular circumstances the force that is used is reasonable, rather than excessive. Use of excessive force could give rise to a claim against the landowner by the trespassers.

The provisions of section 6(1) are often quoted, which makes a criminal of:

"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."

This means that even if the stranger is a trespasser an enforcement agent may not, without lawful authority, use or threaten violence, whether against the person or against property (subsection (4)(a)).



But, by section 12(1) "premises" means:

"any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any land ancillary thereto ... "

So, if land is entirely open, section 6(1) will not apply.

If the trespasser does not leave when asked to do so, the enforcement agent may remove him. Provided the agent uses only such force as is reasonably necessary, he will not commit an offence under section 6(1) of the Criminal Law Act because he is acting with "lawful authority", namely, the authority of the landowner coupled with the blessing of the common law. Further he will not thereby commit the torts of assault or battery

Whenever a landowner is considering the use of common law rights he/she should notify the police of his/her intentions so that police officers can be present to prevent any breach of the peace.

If the police advise that, in the particular circumstances, it is inappropriate to attempt an eviction, action should always be delayed until such time as the police believe that it is safe to continue. *[H.M. Government – Office of the Deputy Prime Minister: Guide to effective use of enforcement powers. February 2006 code: 05HC03600]*

Before carrying out an expulsion in reliance on the common law or doing anything else which might interfere with the stranger's peace or comfort, an enforcement agent must satisfy himself or herself that the person said to be a trespasser does not have any form of permission to be on the land.



## **The HCE Group National Eviction Team (NET)**

The HCE Group NET provide a comprehensive eviction enforcement service to follow on from our initial attendance to assess the site. HCE Group NET provide specialist trained and equipped Enforcement Officers to remove persons in occupation from any location (including areas at height, or in confined spaces such as tunnels dug to resist eviction!) using safe, effective, decisive and proportionate action.

HCE Group NET will liaise with the local police service to provide an effective and proportionate response, using the powers granted under the writ, warrant or at common law

### **Deployment:**

When deployed, the NET enforcement officers are identified by a black uniform, with white safety helmet and black safety boots, bearing insignia on their backs and left breast which read "Enforcement Agent".

The officers are not differentiated by type of uniform or badge dependent upon the type of enforcement being undertaken, since on large operations dealing with major trespasser incursions, there may be enforcement undertaken simultaneously in accordance with CPO warrants, writs of possession and also under common law powers.

The deployment of the NET enforcement officers is always undertaken under the direct command and control of an Authorised HCEO, present "in proper person", who will undertake the Silver command role at the site (which role is intended to be analogous to and compatible with the Police service operational command structure).

On significant enforcement operations where a risk to public order is present, an additional AHCEO may also assume the Gold command role, and will undertake the overall command of the enforcement operation, usually off-site from a designated control centre or Police operations room.



- **Appendix I: Local Authority Powers**

**Criminal Justice and Public Order Act 1994 (1994 c. 33)**

**Part V Powers to remove unauthorised campers Section 77**

<http://www.legislation.gov.uk/ukpga/1994/33/section/77>

**77 Power of local authority to direct unauthorised campers to leave land.**

(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area—

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or

(b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it



operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

(6) In this section—

“land” means land in the open air;

“local authority” means—

(a) in Greater London, a London borough or the Common Council of the City of London;

(b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;

(c) in Wales, a county council or a county borough council;

“occupier” means a person entitled to possession of the land by virtue of an estate or interest held by him;

“vehicle” includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the M1Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as residing on any land notwithstanding that he has a home elsewhere.

(7) Until 1st April 1996, in this section “local authority” means, in Wales, a county council or a district council.



## **Criminal Justice and Public Order Act 1994 (1994 c. 33)**

### **Part V Powers to remove unauthorised campers Section 78**

<http://www.legislation.gov.uk/ukpga/1994/33/section/78>

#### **78 Orders for removal of persons and their vehicles unlawfully on land.**

(1) A magistrates' court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority's area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.



(6) Section 55(2) of the Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

## **Criminal Justice and Public Order Act 1994 (1994 c. 33)**

### **Part V Powers to remove unauthorised campers Section 79**

<http://www.legislation.gov.uk/ukpga/1994/33/section/79>

#### **79 Provisions as to directions under s. 77 and orders under s. 78.**

(1) The following provisions apply in relation to the service of notice of a direction under section 77 and of a summons under section 78, referred to in those provisions as a "relevant document".

(2) Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) A local authority shall take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in a manner designed to ensure that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document shall be given by the local authority to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, the authority is unable to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land shall be entitled to appear and to be heard in the proceedings.

(5) Section 77(6) applies also for the interpretation of this section.



## **Criminal Justice and Public Order Act 1994 (1994 c. 33)**

### **Part V Powers to remove unauthorised campers Section 80**

<http://www.legislation.gov.uk/ukpga/1994/33/section/80>

#### **80 Repeal of certain provisions relating to gipsy sites.**

(1) Part II of the Caravan Sites Act 1968 (duty of local authorities to provide sites for gipsies and control of unauthorised encampments) together with the definition in section 16 of that Act of “gipsies” is hereby repealed.

(2) In section 24 of the Caravan Sites and Control of Development Act 1960 (power to provide sites for caravans)—

(a) in subsection (2), after paragraph (b) there shall be inserted the following— “, or

(c) to provide, in or in connection with sites for the accommodation of gipsies, working space and facilities for the carrying on of such activities as are normally carried on by them,”; and

(b) in subsection (8), at the end, there shall be inserted the words “ and “gipsies” means persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such. ”.

(3) The repeal by subsection (1) above of section 8 of the said Act of 1968 shall not affect the validity of directions given under subsection (3)(a) of that section; and in the case of directions under subsection (3)(c), the council may elect either to withdraw the application or request the Secretary of State to determine the application and if they so request the application shall be treated as referred to him under section 77 of the Town and Country Planning Act 1990.

(4) The repeal by subsection (1) above of the definition of “gipsies” in section 16 of the said Act of 1968 shall not affect the interpretation of that word in the definition of “protected site” in section 5(1) of the Mobile Homes Act 1983 or in any document embodying the terms of any planning permission granted under the Town and Country Planning Act 1990 before the commencement of this section.

(5) Section 70 of the Local Government, Planning and Land Act 1980 (power to pay grant to local authorities in respect of capital expenditure in providing gipsy caravan sites) is hereby repealed so



far as it extends to England and Wales except for the purposes of applications for grant received by the Secretary of State before the commencement of this section.



## Appendix II

### Removal of trespassers at Common law

#### Common Law Powers

High Court Enforcement Officers are able help landowners to repossess their land from trespassers without a prior eviction order. In doing so the landowner and the enforcement officer rely upon the common law remedy of expulsion. That is set out in **volume 97 of Halsbury's Laws of England 5th ed. at para.588**. (in the 4<sup>th</sup> edition, it may be found in volume 45). It reads:

*"If a trespasser peaceably enters or is on land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave may remove him from the land, using no more force than is reasonably necessary. However, if a trespasser enters with force and violence, the person in possession may remove him without a previous request to depart. An owner of property is also entitled to take reasonable steps to prevent trespassers from entering his property. If the force or violence used in turning out a trespasser is excessive, the person who used such force himself commits a trespass upon the person of the person removed. To justify the expulsion of a trespasser, the person who uses force must be in possession or acting under the authority of the person in possession.*

*If a trespasser erects a building on the land of another, the person who is entitled to the possession of the land may pull down the building, even though the trespasser is in it."*

*[Halsbury's Laws of England 5<sup>th</sup> edition, vol. 97, p.588]*

The cases that Halsbury's cites as authority for that statement all involve the removal of a trespasser from a building of some kind which makes clear that the right is not limited to "open land". The cases cited are as follows:

*Hall v Davis* (1825) – this related to the defendant's removal of a servant from a house which the defendant possessed.

*Thomas v Marsh and Nest* (1833) – this related to stewards removing an individual from a music festival at a county hall after he tried to enter without a ticket.



*Shaw v Chairitie Esq* (1850) – this related to the removal of a butler from a house by the master of the household after the butler caused a disturbance.

*Jackson v Courtenay* (1857) – this related to church officials removing an individual who had previously been appointed as a clerk of a chapel from the vestry of that chapel.

*Hemmings v Stoke Poges Golf Club* (1919) – this related to the removal of a former employee of the golf club from a cottage provided during his employment.

These common law powers

- can only be used by the landowner;
- are used to regain possession of land;
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- are enforced by the landowner and/or private bailiffs where necessary;
- do not provide any sanctions offence for the return of trespassers onto land.

All landowners can use their common law rights to recover land (i.e. the tort of trespass against property). This allows the person in possession of land to evict an individual from their land, seek damages for their trespass on their land, and/or seek an injunction to prevent the trespass from occurring again.

Case law has established that a trespasser who enters land peaceably is entitled to a request to leave the land before being forcibly removed, while a trespasser who has entered land with force and violence may be removed without a previous request to depart.

If the trespasser does not leave the land the possessor of the land may use no more force than is reasonably necessary to evict him or her. Private bailiffs [e.g. High Court Enforcement Officers] may be used to carry out the eviction. The issue of what is 'reasonable force' is a question of fact to be decided in each individual case, however it must be an honestly held belief that in the particular circumstances the force that is used is reasonable, rather than excessive. Use of excessive force could give rise to a claim against the landowner by the trespassers.



Whenever a landowner is considering the use of common law rights he/she should notify the police of his/her intentions so that police officers can be present to prevent any breach of the peace.

If the police advise that, in the particular circumstances, it is inappropriate to attempt an eviction, action should always be delayed until such time as the police believe that it is safe to continue.

*[H.M. Government – Office of the Deputy Prime Minister: Guide to effective use of enforcement powers. February 2006 code: 05HC03600]*

Before carrying out an expulsion in reliance on the common law or doing anything else which might interfere with the stranger's peace or comfort, an enforcement agent must satisfy himself or herself that the person said to be a trespasser does not have any form of permission to be on the land.

### **Protection from Eviction Act 1977**

Section 3 of the Act renders an eviction without court proceedings unlawful. It applies to premises "let as a dwelling under a tenancy" and to "any premises occupied as a dwelling under a licence" but not to an "excluded tenancy" nor an "excluded licence". Section 3A(2) defines an excluded tenancy and an excluded licence.

The point is this. The common law remedy of expulsion will not be available if the person said to be a trespasser ("the stranger") is in fact (a) a tenant or (b) a former tenant whose tenancy has come to an end or (c) in occupation with the consent of the landowner under a licence whether oral or written (save for an excluded licence).

In *R. v. Phekoo* [1981] 1 W.L.R.1117 the Court of Appeal decided that a defendant who honestly believed on reasonable grounds that the person on the land was not a residential occupier was not guilty of an offence under section 1(3). That defence would also apply to a charge under section 1(2). Nevertheless, having made inquiries, if there is any doubt in the agent's mind, the landowner should be urged to take court proceedings (or at least to seek legal advice) and for the agent to refrain from acting further without a court order. This is the HCEO's practice.



The first and most important matter for an enforcement agent to consider is whether or not the stranger is indeed a trespasser. Once the agent is satisfied that is so, it does not matter how long the stranger has been on the land. Simply because he or she has been there for more than 24 hours does not change his or her status. He or she remains a trespasser so long as he occupies the land without the permission of the landowner. There may be many reasons why the landowner was not aware of the trespass sooner or why, having become aware of it, he did not act sooner. At common law the stranger remains a trespasser to the land for the initial 24-hour period (or whatever other period of grace is given). He stays there on sufferance, not with the consent of the landowner. The position is the same under the Criminal Law Act 1977.

If the trespasser does not leave at the end of the period of grace, the enforcement agent may remove him. Provided the agent uses only such force as is reasonably necessary, he will not commit an offence under section 6(1) of the Criminal Law Act because he is acting with "lawful authority", namely, the authority of the landowner coupled with the blessing of the common law. Further he will not thereby commit the torts of assault or battery.

### **Criminal Law Act 1977**

The provisions of section 6(1) are often quoted, which makes a criminal of:

"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."

This means that even if the stranger is a trespasser an enforcement agent may not, without lawful authority, use or threaten violence, whether against the person or against property (subsection (4)(a)).

But, by section 12(1) "premises" means:

"any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any land ancillary thereto ... "

So, if land is entirely open, section 6(1) will not apply.

If the trespasser does not leave when asked to do so, the enforcement agent may remove him. Provided the agent uses only such force as is reasonably necessary, he will not commit an offence under section 6(1) of the Criminal Law Act because he is acting with "lawful authority", namely, the authority of the landowner coupled with the blessing of the common law. Further he will not thereby commit the torts of assault or battery



### Appendix III: Reasonable Force

**volume 97 of Halsbury's Laws of England 5th ed. at para.588.** (in the 4<sup>th</sup> edition, it may be found in volume 45). It reads:

*"If a trespasser peaceably enters or is on land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave may remove him from the land, using no more force than is reasonably necessary. However, if a trespasser enters with force and violence, the person in possession may remove him without a previous request to depart. An owner of property is also entitled to take reasonable steps to prevent trespassers from entering his property. If the force or violence used in turning out a trespasser is excessive, the person who used such force himself commits a trespass upon the person of the person removed. To justify the expulsion of a trespasser, the person who uses force must be in possession or acting under the authority of the person in possession.*

*If a trespasser erects a building on the land of another, the person who is entitled to the possession of the land may pull down the building, even though the trespasser is in it."*

#### Footnotes:

(1) *Hall v Davis* (1825); *Thomas v Marsh and Nest* (1833); *Moriarty v Brooks* (1834); *Webster v Watts* (1847); *Shaw v Chairitie* (1850); *Jackson v Courtenay* (1857); *Scott v Matthew Brown & Co Ltd* (1884); *Hemmings v Stoke Poges Golf Club Ltd* (1920) *It is no part of the duty of a police constable to turn out a peaceable trespasser unless he has committed an offence: Wheeler v Whiting* (1840); *R v Chief Constable of Devon and Cornwall, ex p Central Electricity Generating Board* (1982) (police may assist expulsion); and see para 828 post. See also *Dutton v Manchester Airport plc* (1999)

(2) *Weaver v Bush* (1788); *Tulley v Reed* (1823); *Polkingham v Wright* (1845)

(3) See para 435 ante

(4) *Gregory v Hill* (1799); *Simpson v Morris* (1813); *Johnson v Northwood* (1817); *Green v Bartram* (1830); *Oakes v Wood* (1837); *Ball v Axten* (1866). As to trespassers being injured by animal on the land see *ANIMALS* vol 2 (2008) PARA 749. As to spring guns, mantraps ect see *CRIMINAL LAW, EVIDENCE AND PROCEDURE* vol 11(1) (2006 Reissue) para 131. AS to dog spears, traps etc. see *ANIMALS* vol 2 (2008) PARA 783.

(5) *Monks V Dykes* (1839); *Holmes v Bagge* (1853).

(6) *Burling v Read* (1850) distinguishing *Perry v Fitzhowe* (1846). See also *Davies v Williams* (1851); *Jones v Jones* (1862); *Jones v Foley* (1891); and cf *Lemmon v Webb* (1896) (right to lop overhanging branches).



(7) See the Criminal Justice and Public Order Act 1994; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 590. As to aggravated trespass see the Criminal Justice and Public Order Act 1994 ss 68, 69; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 592.

### **Extracts from *Holmes – v – Bagge & R – v – Chief Constable of Devon and Cornwall***

In *Holmes v Bagge* there was a cricket match in which the Claimant was ejected from the field of play by the Defendant, again the case is as to whether the Defendant had sufficient possession of the field. The use of force to remove the Claimant was said to be justified provided the Defendant had possession of the field. In the matter the cricket field was not owned by the Defendant though there was an agreement to use it for Cricket. There were a number of 'pleas' in the matter as to the claim. The report states that the pleas were not correctly worded, though based on the wording of the pleas the removal of the Claimant by the Defendant was justified as the 'pleas' stated that the Defendant was in possession of the property and therefore the Defendant was not liable in a claim for trespass. The use of force in this matter is described as: 'whereupon the Defendants gently laid their hands on him "in order to remove, and did remove, him from and out of the said close" and that this level of force was not questioned at all.

The case of *Holmes v Bagge* is referred to in *R v Chief Constable of Devon and Cornwall, ex parte Central Electricity Generating Board (1981)* in which Lord Denning states (I attach a copy of the Judgment):

"In the first place, I must say that the leaflet issued by the organisers is completely erroneous. The Board and their contractors are entitled to manhandle the obstructers so as to move them out of the way. Every person who is prevented from carrying out his lawful pursuits is entitled to use self-help, so as to prevent any unlawful obstruction: see *Holmes v Bagge* (1853) 1 E & B 782, 786-787 by Lord Campbell CJ. He must, of course, not use more force than is reasonably necessary: but there is no doubt whatever that he can use force to do it."

This case relates to surveys that the Central Electricity Generating Board was undertaking to determine a site for a Nuclear power station, the Board had a legal right to enter private property to carry out the survey this was being obstructed and was therefore unlawful. This case was an application by the Board to compel the local constabulary to arrest the obstructing protesters to ensure that the survey can be carried out. The obstruction of the survey was a criminal offence punishable by a fine. It was stated by Lord Denning that the Board could use 'self-help' to remove the obstruction. Lord Justice Lawton agreed but was more cautious as 'self-help' is likely to cause a breach of the peace and should be discouraged as much as possible as this would cause a statutory



body to take the law into its own hands. Lord Justice Lawton and Lord Justice Templeman stated that the Board may only use the minimum force necessary for the purposes of asserting their rights. It was established that the Police should attend and supervise the removal of the obstructing protesters.

**Extract from *Hemmings and Wife v The Stoke Poges Golf Club***

.... Accordingly the defendant Jackson gave directions to an estate agent named Irons to take the necessary steps for turning out the plaintiffs and their belongings if they would not go before such a date as Mr. Irons might reasonably appoint. Mr. Irons approached the plaintiffs with a view to their going, intimating that he had instructions for the purpose of moving them, but his communication with them was without avail. Thereupon on August 2 Mr. Irons, with four men whom he had employed, one being a contractor and the other three the contractor's servants, went to the cottage in question. A police constable, who had received instructions from his superior officer, also attended with a view to preventing, as far as possible, a breach of the peace, and Mr. Jackson, junior, also attended, more as a spectator than anything else. Mr. Irons knocked at the door. It was opened by Mrs. Hemmings. There was a conversation and Mr. Irons crossed the threshold and entered the house. He inquired whether Mrs. Hemmings was prepared to turn out and she said "No"; whereupon he called in his men, and they proceeded to remove the furniture. The plaintiff, James Hemmings, then appeared on the scene, having been sent for. The plaintiffs refused to go; they protested against the removal of their furniture; their furniture was in fact turned out and James Hemmings was either led or gently pushed out as he refused to go himself. Mrs. Hemmings was the last to leave, and she left involuntarily. She was seated in a chair with a baby in her arms. She refused to move, and intimated that if she was to go out she would have to be carried out. Whereupon Mr. Irons and another man who was present raised the chair and carried it to the threshold. There Mrs. Hemmings handed the baby to her husband and, still sitting in the chair, she was then carried across the threshold and deposited outside.

The furniture was put into the garage. Some rain fell while this was being done. The garage was not completely walled in and rain did to a certain extent reach the furniture. At about two o'clock it rained heavily, and during this heavy fall the removal of the furniture was discontinued.

The learned judge came to the conclusion that no force was used beyond what was necessary for the purpose of ejecting the plaintiffs.....



## **Appendix IV: Transfer of writs of possession to the High Court**

**Extract from article written for the periodical journal of the Association of Chief Estates Surveyors  
by Chris Bell, former Policy Advisor at The MoJ**

..... This will usually be done by way of an application through the county court to begin with, although for enforcement purposes there is scope for the matter to be transferred up to the High Court.

Possession claims through the civil courts are made using the procedure laid down in Part 55 of the Civil Procedure Rules, and will usually commence in the local county court (Possession Claims On-Line, or PCOL as it is known, is not available for such claims), with the claim being made on a claim form N5 accompanied by the particulars of the claim and any witness statements the claimant is intending to rely on in court. Where the names of some or all of the defendants are not known, the claim must be made against 'persons unknown' as well as any named defendants.

Action does not have to commence in the county court, however. There is scope for the case to be commenced in the High Court if certain exceptional conditions are met, and the case of *Mutley vs. Somerset* (2007) largely established what such circumstances would be – the factors that will be taken into consideration largely relate to risk of possible public disturbance, risk of harm to persons involved in the eviction, whether the past and future occupancy of the land had caused or would cause the claimant's serious financial loss or that there was a continuing risk of harm to persons or property.

Unfortunately, it can be a fairly lengthy process getting your claim dealt with by the courts – although delays are more commonplace in the county courts than in the High Court. The rules do not state a specific timeframe within which the case will be heard – they merely refer to the need for the claim form to be served on the defendants no less than 5 days before the date of the hearing, although this can be shortened on application. Specific rules apply for what constitutes 'service' in 'persons unknown' cases; and there is no requirement for the defendant to respond or serve an acknowledgment or a defence in possession cases – they can merely turn up on the day of the hearing to defend their claim should they wish to do so.

Should the order be made in favour of the applicant, however, it becomes effective immediately and the court has no power to give a trespasser time to vacate the premises without the express consent of the landowner. The writ or warrant of possession may be issued at any time after the order is made, but no writ or warrant may be issued more than 3 months after the order without leave of the court.



Once you have your order, you are then faced with the decision of who you choose to enforce your order – this may be done through the County Court or the High Court. Many people may not be aware that enforcement of evictions can be done through the High Court, but since 2001 it has been the case that you may enforce a county court order for possession made in a claim against trespassers in the High Court, using a transfer up procedure similar to that used for transferring up judgment debts. The advantages of using this procedure are that you will almost certainly get a quicker and more effective service by transferring up rather than waiting for your eviction to filter its way slowly through the county court enforcement system until the county court bailiffs finally get round to dealing with it.

An alternative civil court procedure is the Interim Possession Order. This is certainly quicker but does entail more risk for the landowner. Application is made using the procedure laid down in Part 55 Section III of the CPR, and if the order is approved, the defendant must vacate the premises within 24 hours of the order being served. Remaining on the premises whilst the order is in force is a criminal offence, with a hearing date fixed for not less than 7 days after the order.

However, the stringent conditions that are applied to such an order e.g. that the claim must be made within 28 days of the date the claimant first knew of the unlawful occupation of the premises, and that throughout the period of occupation the claimant had an immediate right to possession, as well as the additional costs and time that such applications may involve, means that this is only likely to apply in the most straightforward of squatter cases where the likely success of the claim is indisputable.

One further area where local authorities and public bodies may require moving occupiers from land or property is the enforcement of compulsory purchase orders. Since 2007 the enforcement of such orders has become the preserve of High Court Enforcement Officers, and local authorities may choose which officer they wish to enforce such orders on their behalf.

With such a complicated area of law, even the most experienced local authority lawyer may need help in deciding what the best way to proceed is. Enforcement companies will be able to give advice on all aspects of the law relating to squatters, protesters and travellers, and AHCEO's have experience of jobs of all shapes and sizes ....



**Appendix V: Police Assistance & obstruction**  
**extract from Sections 99 & 189 of the Courts Act 2003**

Paragraph 5, Schedule 7, of Section 99 of the Courts Act 2003 states as follows:

**Constable's duty to assist enforcement officers**

It is the duty of every constable, at the request of -

- (a) an enforcement officer, or
- (b) a person acting under the officer's authority,

to assist the officer or that person in the execution of a writ.

Attention is also drawn to Section 189 of The Courts Act 2003, which amends the provisions of The Criminal Law Act 1977 which made it an offence to obstruct a Sheriff's Officer in the execution of a High Court Writ.

As a result of the 2003 Act, Sheriffs are replaced by High Court Enforcement Officers.

Section 189 of the Courts Act 2003, amends Section 10 of the 1977 Act so that a person is guilty of an offence if he resists or intentionally obstructs any person who is an enforcement officer or a person acting under the authority of an enforcement officer and who is engaged in executing a Writ issued from the High Court or a county court warrant.



## Appendix VI:

### Notes relating to public rights on byways:

Further to the exchanges below: the question of public rights on byways is quite a complicated area. The highlights are as follows.

1. ....We are concerned with byways over which the public have a right of way. Every way which, in pursuance of the Countryside Act 1968 Sch 3 Pt III para 9, or any order made under the Wildlife and Countryside Act 1981 s.54(1) before the coming into force of the Countryside and Rights of Way Act 2000 s.47 on 2 May 2006, is shown in any definitive map and statement as a byway open to all traffic, a bridleway or a footpath, continues to be maintainable at the public expense: 1981 Act, s.49(3). 'Byway open to all traffic', 'bridleway' and 'footpath' are all defined in s.66 of the 1981 Act and are subject to public rights of way. It will be necessary to identify the exact status of the various ways over and around the CPO land but it seems highly probable that the public have rights of way over them.
2. References to "CPO land" are intended to be shorthand for land now owned by the statutory authority for the purposes of the works and should be read in conjunction with advice that a warrant for possession of CPO land under s.13 of the 1965 Act is probably "spent" once possession has been first obtained under its terms.
3. We are concerned with two different types of byway: a way that is on (i.e. goes across) the CPO land and a way which adjacent to, but not on, the CPO land. In the former case, a person using the way would, but for the public right of way, be a trespasser on the CPO land. In the latter case, he would not.
4. In either case, the public has a right at common law to pass along a highway for the purpose of legitimate travel, but not to be on it, except so far as the public's presence is attributable to a reasonable and proper user of the highway as such. In order to accommodate rights under the European Convention on Human Rights in respect of freedom of expression and of assembly under Articles 10 and 11, the common law has been adapted so that there is a public right of peaceful assembly on the highway, provided that the activity in question does not amount to a public or private nuisance and does not obstruct the highway by *unreasonably* impeding the primary right of the public to pass and repass (*DPP v Jones* [1999] 2 AC 240).
5. Where Articles 10 and 11 are engaged in connection with a protest on public land, a conflict may arise with the landowner's rights in respect of his land under Article 1 of the First Protocol. In that event, the court's approach is that: (1) rights under Article 1 of the First Protocol and rights under Articles 10 and 11 do not have precedence over each other; (2) where the values under the respective Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; (3) the justifications for interfering with or restricting each right must be taken into account, and (4) the proportionality test, or ultimate balancing test, must be applied to each.
6. Strasbourg law indicates that an obstruction of the highway will not always justify an interference with the demonstrators' rights under Articles 10 and 11. In *Kuznetsov* [2008] ECHR 1170, the demonstration amounted to a trespass to a court building and blocked a public right of

way, but it lasted only 30 minutes, it appeared to interfere with no public rights in practice and ended as soon as the police requested it to end. The court held that the subsequent prosecution of a demonstrator was an unjustifiable interference with his Convention rights, noting that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.

7. Interference with those rights will be justified where the demonstrator's actions go well beyond mere protest. A recent example is *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1012 (Ch), where protesters against the development of Leyton Marsh in London obstructed the highway leading to an Olympic site by playing boules on it for several hours and at other times by lying on the road in front of delivery lorries, creating both a private nuisance in respect of access to the site and a public nuisance to users of the highway. After balancing the competing Convention rights, the judge granted Injunctions against obstructing the highway and interfering with the works on the land in terms that did not prevent peaceful protest.

8. By s.6 of the HRA 1998, public authorities, including the courts and local authorities, together with their agents, must not act in a way that is incompatible with the Convention. Balancing the relevant considerations mentioned above is difficult enough for judges to decide in the relative tranquillity of the RCJ in the Strand: it is expecting a lot of an enforcement officer to be able to balance those rights correctly on a cold and wet morning in the countryside in the face of deliberate provocation by demonstrators who have "done their homework".

9. Where a demonstrator's conduct on a byway across CPO land goes well beyond peaceful protest, such that he is not using the highway for a reasonable and proper purpose, he is a trespasser so far as the owner of the CPO land is concerned and that trespass may be abated by the use of reasonable force to remove him from the land. Where the byway is not on the CPO land and the actions of the demonstrators cause an unreasonable interference with works on the land, such as to amount to a private nuisance, that nuisance may be abated by the use of reasonable force but that does not necessarily mean that it is reasonable to march them to the end of the byway or even to the end the boundary of relevant part of the CPO land: the question of what is reasonable is entirely case-sensitive.

10. Assuming that the hedges on either side of the byway are part of the CPO land and not part of the byway, a protester who decides to "take a rest" in the hedge, or inside the boundary of the CPO land (as seen in a recent video), is committing a trespass if the rest is prolonged or is creating an obstruction to activities on the land, and may be removed, but only back onto the byway. However, if one or more protesters are claiming to be entitled to protest on the land, further factors in balancing the relevant Convention rights include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public (see the *Samede* case [2012] EWCA Civ 160). In a clear case the rights of the landowner will outweigh those of the demonstrators, particularly where they are obstructing his lawful activities and a reasonable alternative area for protest has been provided, but each case must be considered carefully.



## **Appendix VII: Frequently-asked Questions – some notes on unauthorised encampments**

### **Unauthorised Encampments – Gypsies and Travellers**

#### **A document to answer frequently-asked questions**

This document is designed for anyone who has questions about unauthorised encampments.

Various people live in caravans, mobile homes or vehicles on land they do not own, and without the agreement of the owner. Most are Gypsies or Travellers. Some travel long distances from their home base; some only move locally. Some are working as they travel, some are not. Some have lived all their lives on the road. Some cause difficulties to others as they travel - some do not. A few cause great difficulties to other people, out of all proportion to their numbers.

All should be judged by how they behave towards landowners and others, not by a stereotype or single view that others may have of Gypsies or Travellers generally. Whatever the past history and tradition, encamping on someone's land without their consent is unlawful in itself. In certain circumstances, it is not just a breach of civil law, but also criminal law.

Public authorities are landowners themselves, manage land and must consider the rights and responsibilities of everyone living in the geographical area that they are responsible for. Public authorities have a duty to inform and assist everyone as best they can.

#### **Why do some Gypsies/Travellers make unauthorised encampments in certain geographical areas?**

For the purposes of this document, Kent will be used as an example. Kent is crossed by major motorways (M25, M20, M2 and M26). Many Gypsies/Travellers find work here including tree felling and pruning, laying tarmac, roofing, gardening and other general building or clearance work.

Whilst the subject is current and emotive in Kent, Gypsies/Travellers have a basic right to this way of life providing that they do not cause nuisance or anti-social behaviour. This has to be balanced with the rights of the public quietly to enjoy private and public land.

**Does the Council or Police have a duty to move Gypsies/Travellers when they are camped without the landowner's permission?**

No. The powers given to Local Authorities and the Police Service are discretionary and can only be used when certain conditions exist. This leaflet sets out those conditions and what you should expect of the Council and Police. These agencies do use their powers but have to ensure that the powers are used lawfully. Failure to comply with both civil and criminal procedures would render Council and Police Officers liable to successful challenge in the Courts, proving very costly, and could potentially result in the temporary loss of those powers.

The duty of the Police is to preserve the peace and prevent crime. Trespass on land, by itself is not a crime - it is a civil matter. Prevention of trespass is the responsibility of the landowner, not the Council or Police

**Aren't all Gypsies/Travellers just roving criminals?**

No. As in any community, the behaviour of the whole group can be marred by the actions of the few. The anti-social and criminal aspects of the local Gypsy/Traveller Community relate to a small minority. However, often the efforts of the Police to deal with and detect related offences are hindered by an unwillingness of people to come forward and offer the evidence needed to arrest or summons offenders. Very often, Gypsies /Travellers become the object of unfounded criminal complaints and the Police have to ensure that the levels of proof are maintained equally for all. The Police will and do deal with crime committed by Gypsies/Travellers when there is a complaint and evidence to support it, but as with any criminal behaviour action taken by police must be justified, appropriate, proportionate, auditable, and necessary, as set out in the Human Rights Act 1998.

**When will the authorities move Gypsies/Travellers from unauthorised encampments?**

The main legislation relating to unauthorised camping by Gypsies/Travellers is Section 61 and 77 of the Criminal Justice and Public Order Act 1994. That legislation is bound by various interpretations from the Courts and guidance notes from the Government. These guidance notes do not allow or tolerate anti-social or criminal behaviour and such behaviour actually speeds up the processes of the Police and Council in using the powers.



### **What is Section 77?**

This is the power used by the Council where Gypsies/Travellers move onto its land with the purpose of residing there in vehicles.

Section 77 allows the Council to require the Gypsies/Travellers to leave, if appropriate. In addition, the Council Officers can require the Gypsies/Travellers to remove their vehicles and property. It becomes an offence (with no power of arrest) for the Gypsies/Travellers if they fail to leave the land and remove their property within a reasonable time, or if they return to that land within three months. Special consideration exists for Gypsies/Travellers who have an illness, an emergency or a vehicle breakdown.

Local Authorities have responsibilities to make welfare enquiries and to take account of considerations of common humanity whatever the powers used. All decisions by public bodies must be 'proportionate' and accord with the Human Rights Act

## **Appendix VIII: Some notes on the existing law on squatting**

### **The existing law on squatting – a brief guide**

#### **Criminal offences**

Although the act of squatting is not a criminal offence, there are offences which criminalise the activities of squatters in certain circumstances. For example, the criminal law already recognises that occupiers of residential premises are particularly in need of protection because they could conceivably be left homeless by the actions of squatters. It is therefore a criminal offence (under section 7 of the Criminal Law Act 1977) for any person who is on residential premises as a trespasser after having entered as such to fail to leave those premises on being required to do so by or on behalf of “a displaced residential occupier” or “a protected intending occupier” of the premises.

The offence in section 7 of the 1977 Act does not apply to squatters who refuse to leave non-residential property, but squatters who break into any type of property may be guilty of other offences, such as criminal damage, burglary or the unauthorised abstraction of electricity. It is open to the police to bring charges for these offences where there is sufficient evidence.

#### **Civil procedures**

It is also open to the occupier of residential or non-residential premises to pursue a civil procedure to regain possession of their property. Owners can seek to remove squatters from their property by applying in the civil courts for a possession order against the squatters as trespassers. The procedure is set out in Part 55 of the Civil Procedure Rules.

In claims against trespassers the claim may be brought against “persons unknown” if the claimant does not know the names of the person or persons in occupation. The claimant will need to be able to demonstrate that the persons in occupation are trespassers (which does not include any tenant or sub-tenant whether or not the tenancy has been terminated, or a person occupying by virtue of a licence or some other right), but otherwise need prove only their title to and an intention to regain possession of their property. In these circumstances the court will list the case for hearing as soon as practical but must allow a minimum of five days for service on the defendant/s in the case of residential property or a minimum of two days in the case of other land. If the courts grant a possession order, they will also specify a date for the tenant to leave - usually 14 days after the court hearing. As a general rule, cases will proceed in a county court, but may be brought in the High Court



if there is a substantial risk of public disturbance or of serious harm to persons or property which requires immediate determination.

Alternatively, a property owner seeking to evict squatters more quickly may decide to apply for an Interim Possession Order' (IPO). An application for an IPO will be heard as soon as possible after issue although there must be a minimum of three days between service on the defendant(s) and the hearing. It has further advantages in that it is backed up by criminal sanctions provided in section 76 of the Criminal Justice and Public Order Act 1994. Squatters who refuse to leave the property within 24 hours of service of the order or return to the property within a year are committing a criminal offence. The maximum penalty for both offences is six months' imprisonment. There can be disadvantages too, however. Because an IPO is an interim remedy, a subsequent hearing is required for a final order, and the court will in deciding whether to make the IPO have regard to whether the claimant has given or is prepared to give undertakings not to re-let the premises or to damage the premises or the defendant's property before the final order and to reinstate the defendant and pay damages should it subsequently be determined that the claimant was not entitled to the IPO. Also, because the IPO is intended for urgent repossession by a displaced occupier, the application must be made promptly (within 28 days of when the claimant knew or ought to have known that any of the defendants were in occupation); and must involve a claim for possession alone, and cannot be made along with a claim for another remedy, such as damages.

## **The existing legal framework**

### ***Criminal Offences***

There are currently a range of criminal offences that could apply to squatters. These are summarized below:

#### **Section 7 Criminal law Act 1977 (adverse occupation of residential premises)**

Under section 7 of the 1977 Act any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of either a displaced residential occupier or protected intending occupier of the premises. It is a defence for the accused to prove that he believed that the person requiring him to leave the premises was not a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of such a person. It is also a defence if the accused can prove that the premises are premises used mainly for non-residential purposes and that the accused was not on part of the premises used wholly or mainly for residential purposes.

The maximum penalty for such an offence is 6 months imprisonment or a fine not exceeding £5,000 or both.

A displaced residential occupier is a person who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser provided that he continues to be excluded from occupation of the premises by the original trespasser or any subsequent trespasser. A person who was occupying the premises in question as a trespasser immediately before being excluded is not a displaced residential occupier (see section 12 of the 1977 Act).

The definition of “protected intending occupier” is contained in section 12A of the 1977 Act. The definition is as follows:

“(1) For the purposes of this Part of this Act an individual is a protected intending occupier of any premises at any time if at that time he falls within subsection (2), (4) or (6) below.

(2) An individual is a protected intending occupier of any premises if—

(a) he has in those premises a freehold interest or a leasehold interest with not less than two years still to run;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and

(d) he or a person acting on his behalf holds a written statement—

(i) which specifies his interest in the premises;

(ii) which states that he requires the premises for occupation as a residence for himself; and

(iii) with respect to which the requirements in subsection (3) below are fulfilled.

(3) The requirements referred to in subsection (2)(d)(iii) above are—

(a) that the statement is signed by the person whose interest is specified in it in the presence of a justice of the peace or commissioner for oaths; and

(b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signature.



(4) An individual is also a protected intending occupier of any premises if—

(a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) above or (6)(a) below) or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest with not less than two years still to run in the premises;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and

(d) he or a person acting on his behalf holds a written statement—

(i) which states that he has been granted a tenancy of those premises or a licence to occupy those premises;

(ii) which specifies the interest in the premises of the person who granted that tenancy or licence to occupy (“the landlord”);

(iii) which states that he requires the premises for occupation as a residence for himself; and

(iv) with respect to which the requirements in subsection (5) below are fulfilled.

(5) The requirements referred to in subsection (4)(d)(iv) above are—

(a) that the statement is signed by the landlord and by the tenant or licensee in the presence of a justice of the peace or commissioner for oaths;

(b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signatures.

(6) An individual is also a protected intending occupier of any premises if—

(a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) or (4)(a) above) or a licence to occupy those premises granted by an authority to which this subsection applies;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered the premises, or any access to them, as a trespasser; and

(d) there has been issued to him by or on behalf of the authority referred to in paragraph (a) above a certificate stating that—

- (i) he has been granted a tenancy of those premises or a licence to occupy those premises as a residence by the authority; and
- (ii) the authority which granted that tenancy or licence to occupy is one to which this subsection applies, being of a description specified in the certificate.

(7) Subsection (6) above applies to the following authorities—

(a) any body mentioned in section 14 of the Rent Act 1977 (landlord's interest belonging to local authority etc);

(b) the [Regulator of Social Housing];

(ba) a non-profit registered provider of social housing;

(bb) a profit-making registered provider of social housing, but only in relation to premises which are social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008; and

(d) a registered social landlord within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act).

(7A) Subsection (6) also applies to the Secretary of State if the tenancy or licence is granted by him under Part III of the Housing Associations Act 1985.

(8) A person is guilty of an offence if he makes a statement for the purposes of subsection (2)(d) or (4)(d) above which he knows to be false in a material particular or if he recklessly makes such a statement which is false in a material particular...”

### **Section 76 Criminal Justice and Public Order Act 1994 – criminal sanction for breach of an Interim Possession Order (IPO)**

Squatters must leave the premises within 24 hours of service of an IPO. Under section 76 of the 1994 Act a person who is present on the premises as a trespasser at any time during the currency of an order commits an offence. No offence is committed if the squatter leaves the premises within 24 hours of the time of service of the order. It is also an offence for a person who was in occupation of the premises at the time of service of the order to return to the premises after the expiry of the order but within a year of the day of service.

The maximum penalty for this offence is six months’ imprisonment or a fine not exceeding £5,000 or both.



### **Powers to remove trespassers on land (not including offices or residential premises)**

Under **section 61(1)** of Criminal Justice and Public Order Act 1994 (the 1994 Act), if the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and -

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

It is a criminal offence for a person to whom such a direction applies (and who knows that it applies to him) to fail to leave the land as soon as reasonably practicable; or, having left, to again enter the land as a trespasser within the three months of the day on which the direction was given.

Section 62A of the 1994 Act enables a senior police officer to direct a person to leave the land, and to direct the person to remove any vehicle or other property he has with him on the land. This power applies where the occupier of the land or a person acting on their behalf has asked the police to remove the trespassers from land and there are two or more trespassers present with the purpose of residing on the land, they have one or more vehicles and if the person has one or more caravans in his possession or control on the land, that there is a suitable pitch available on a relevant site in the local authority's area.

Failure to comply with a direction under section 62A is a criminal offence (under sections 62B and 62C of the 1994 Act).

### **Powers to remove persons attending or preparing for a rave**

Section 63 of the 1994 Act (as amended by section 58 of the Anti-social Behaviour Act 2003) contains similar powers to remove persons who are attending or preparing for a rave. Section 63 applies to a gathering of 20 or more people (whether trespassers or not) "at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality". Section 58(3) of the Anti-social Behaviour Act extended section 63 of the 1994 Act to cover raves in buildings, if those attending the rave are trespassing.

It is a criminal offence for a person to whom a direction to leave applies (and who knows that it applies to him) to fail to leave the land as soon as reasonably practicable; or, having left, to again enter the land within 7 days of the day on which the direction was given. It is also an offence for a person who knows that a direction to leave which applies to him has been given, and who makes preparations for or attends a gathering to which section 63 applies within 24 hours of the direction being given.

### **Power of local authority to direct unauthorised campers to leave land**

Under section 77(1) of the 1994 Act, if it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area –

- (a) on any land forming part of a highway;
- (b) on any other unoccupied land; or
- (c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they may have with them on the land.

It is a criminal offence for a person to whom such a direction applies (and who knows that it applies to him) to fail, as soon as reasonably practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction or having removed any vehicle or property, to again enter the land with a vehicle within 3 months of the day on which the direction was given.

Under section 78 of the 1994 Act upon the complaint of a local authority can order the removal of persons and their vehicles who are unlawfully on the land (in contravention of a direction given under section 77 of the 1994 Act). The court order can authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with. A person who wilfully obstructs any person in exercise of any power conferred by an order under section 78 commits an offence.



### **Offence of aggravated trespass**

Under section 68 of the 1994 Act a person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended to have the effect of intimidating those persons so as to deter them from engaging in the activity, obstructing that activity, or disrupting that activity.

Under section 69 of the 1994 Act a senior police officer has power to direct a person who is committing, has committed, or who he reasonably believes intends to commit aggravated trespass, to leave the land. It is an offence for a person who knows that such a direction has been given which applies to him to fail to leave the land as soon as practicable, or having left to enter the land as a trespasser within 3 months of the direction being given.

### **Section 6 Criminal Law Act 1977**

Section 6 of the Criminal Law Act 1977 makes it an offence to use violence or threats of violence to gain access to premises when there is someone on the premises who is opposed to such entry. The maximum penalty for this offence is six months imprisonment or a fine not exceeding £5,000 or both.

The Criminal Justice and Public Order Act 1994 amended the 1977 Act to offer greater protection to residential property owners. It made it clear that the offence of using violence to secure entry into premises does not apply to a person who is a "displaced residential occupier" or a "protected intending occupier" of the premises or who is acting on behalf of such an occupier.

So a displaced residential occupier who broke down a door to re-enter his property when there was someone on the premises who was opposed to such entry would not commit the offence of using violence to secure entry into premises provided he could prove that he was such an occupier. However, this exemption does not apply to occupiers of non-residential properties who are seeking to enter their non-residential premises.

The provisions of section 6(1) are often quoted, which makes a criminal of:

"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."

This means that even if the stranger is a trespasser an enforcement agent may not, without lawful authority, use or threaten violence, whether against the person or against property (subsection (4)(a)).

But, by section 12(1) "premises" means:

"any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any land ancillary thereto ... "

So, if land is entirely open, section 6(1) will not apply.

If the trespasser does not leave when asked to do so, the enforcement agent may remove him. Provided the agent uses only such force as is reasonably necessary, he will not commit an offence under section 6(1) of the Criminal Law Act because he is acting with "lawful authority", namely, the authority of the landowner coupled with the blessing of the common law. Further he will not thereby commit the torts of assault or battery

### **Other criminal offences that could apply to squatters**

Other criminal offences such as criminal damage, burglary and abstracting electricity could also be used to prosecute squatters who cause damage, steal property whilst trespassing or abstract electricity.

### ***Civil Procedures***

#### **Interim possession orders**

A civil procedure introduced in 1995 is intended to make it easier and quicker for people to regain possession of their property from squatters by seeking an 'Interim Possession Order' (IPO).

The IPO is a civil order backed up by criminal sanctions (see paragraph 4 above), provided in section 76 of the Criminal Justice and Public Order Act 1994, to deal with squatters who trespass during the currency of an interim possession order. Where certain conditions are met, the correct application procedure is followed and the requisite notices are served, an IPO may be made within a matter of days. Squatters must leave the premises within 24 hours of service of the IPO. If they do not they are committing a criminal offence.

It is a criminal offence (punishable by up to 6 months imprisonment) not only for the squatters to disobey an IPO, but also if they return to the premises without the permission of the landlord or the tenant for a period of up to 12 months from the date of service of the IPO.

The IPO procedure cannot be used if the claimant is seeking another remedy, for example damages



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# HS2 Ltd Ignore Criminal Law Act Protections to Partly Evict Harvil Road Camp Without Eviction Order

Today, HS2 Ltd decided to evict the Harvil Road HS2 protection camp in Harefield, despite the fact that protestors had legal occupation of the land under the Criminal Law Act 1977.

## How you can help

Simple ways to help

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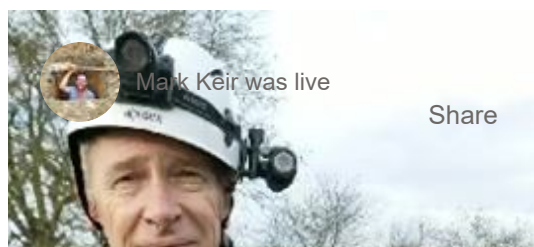
Visit the Stop HS2 shop  
<http://www.stophs2-officialmerch>

In November last year, HS2 won an eviction order for part of the footpath connecting the field off Harvil Road to the other end of the campsite in the woodland by the HOAC lake. At the time, the judge was very specific that the eviction order only applied to the path, but today HS2 Ltd decided they could evict the entire camp under Compulsory Purchase Order powers, despite the supposed protection of the CLA, which suggests this is an illegal eviction. Additionally, the camp was there with the permission of the previous tenant before the CPO came into effect, and besides the footpath no notice of eviction has ever been served on the camp.

In this video, the man in charge of the eviction admits there is no eviction order, and the eviction is being conducted under a compulsory purchase order, despite the fact the land is covered by a notice of occupation under the Criminal Law Act.



Here, the lead enforcement officer explains further that HS2 Ltd and the DfT themselves issued a writ for the eviction, which is happening with no notice whatsoever, despite the camp being covered by a Schedule 6 notice, and it being the permanent place of residence of several of the campers.



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Finally, Sarah Green tries to explain that HS2 Ltd are carrying out an illegal eviction, in breach of the Criminal Law Act 1977. Not long after posting this video, Sarah was carried off the main part of the site.



At the time of writing, HS2 Ltd say they have taken the field part of the camp, the bit next to next to Harvil Road, the other end of the camp in the woodland at HOAC lake seems safe and remains occupied for now. However, HS2 Ltd didn't properly fence off the entire field, so protestors are still on the site and have never left that one corner. No matter what HS2 might claim about taking vacant possession of the land, the land occupied for the last two years doesn't end where they have arbitrarily placed their fence. HS2 Ltd are apparently letting people back into the camp tomorrow (Wednesday 8th January) to retrieve belongings.

It is clear that this eviction has been hastened by the fact that HS2 Ltd are planning to take down the trees on Harvil Road and along the Chiltern Line – which comprises two sides of

=+HS2+-HS2.  
0)

Plane, train, or automobile? The climate impact of transport is surprisingly complicated – MENAFN.COM (<https://menafn.com/1100512649/Plane-train-or-automobile-The-climate-impact-of-transport-is-surprisingly-complicated>)

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Moving the Lords to York is an idea so impractical it could only have come from the Westminster bubble – Telegraph.co.uk (<https://www.telegraph.co.uk/politics/2020/07/20/moving-lords-york->

the field the main camp is in – on the weekend on 17th=19th January. HS2 Ltd had planned to do this earlier in the year, but were prevented in doing by an occupation (<http://stophs2.org/news/18269-trees-standing-colne-valley>).

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- 1) Action at Colne Valley more successful than ever hoped for (<http://stophs2.org/news/19088-action-colne-valley-successful-hoped>)

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Archaeologists safely remove Wendover 'Winter Solstice' monument – Bucks Herald (<https://www.bucks herald.co.uk/education/archaeologists-safely-remove-wendover-winter-solstice-monument-2918251>)

### Recent Posts

Court of Appeal agrees to hear HS2 environmental challenge (<http://stophs2.org/news/19339->



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20-27 June:  
Extinction  
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HS2 Ltd and Health  
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JULIET

9TH JANUARY 2020 AT 5:21 PM  
([HTTP://STOPHS2.ORG/NEWS/18988-HS2-ATTEMPTING-EVICTION-HARVIL-ROAD-EVICTION-ORDER#COMMENT-15597](http://stophs2.org/news/18988-hs2-attempting-eviction-harvil-road-eviction-order#comment-15597))

very shocking, what does the local MP have to say about this?

**VICTORIA LINDSELL**

7TH JANUARY 2020 AT 5:28 PM  
([HTTP://STOPHS2.ORG/NEWS/18988-HS2-ATTEMPTING-EVICTION-HARVIL-ROAD-EVICTION-ORDER#COMMENT-15596](http://stophs2.org/news/18988-hs2-attempting-eviction-harvil-road-eviction-order#comment-15596))

This is continued thoughtless rampant destruction with no foresight to inevitable flooding in the future. It must be stopped.

Comments are closed.

And so it begins:  
HS2 Contaminating  
the Chiltern  
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(<http://stophs2.org/news/19290-begins-hs2-contaminating-chiltern-aquifer>)

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Link to first video referred to at paragraph 7(ii)(g) of Jordan 3:

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The video is available via this link until **midnight on 17 August 2020.**

If you are having trouble accessing the video through the above link or require a copy of the video after 17 August 2020, please contact HS2's solicitors (Eversheds Sutherland (International) LLP) by email to [ShonaJenkins@eversheds-sutherland.com](mailto:ShonaJenkins@eversheds-sutherland.com).



Link to second video referred to at paragraph 7(ii)(g) of Jordan 3:

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Citation Number: [2020] EWHC 1460 (QB)

Case No: QB-2020-001679

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Wednesday 13<sup>th</sup> May 2020

**Before:**

**THE HONOURABLE MR. JUSTICE SWIFT**

**Between:**

**(1) STUART ACKROYD**  
**(2) WIKTORIA ZIENIUK**

**Applicants**

**- and -**

**(1) HIGH SPEED TWO (HS2)**  
**(2) HIGH COURT ENFORCEMENT GROUP LTD**  
**(t/a NATIONAL EVICTION TEAM)**

**Respondents**

**PAUL POWLES LAND for the Claimants**

**TOM ROSCOE (instructed by Eversheds Sutherland LLP) for the First Defendant**  
**The Second Defendant was not present or represented**

**APPROVED JUDGMENT**

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**THE HONOURABLE MR. JUSTICE SWIFT:**

1. This is an application for an injunction made by Stuart Ackroyd and Wiktor Zieniuk. The respondents to the application are High Speed Two Limited and High Court Enforcement Group Limited. High Speed Two Limited has appeared on this application, although strictly it remains an *ex parte* application, by counsel Mr Roscoe. The Applicants are represented by Mr Powlesland of counsel.
2. When the application was initiated it was to prevent the eviction of the claimants and others from premises known as RMC Garages, Dews Lane in Harefield. That property is owned by HS2, the First Respondent, pursuant to a declaration made in exercise of powers arising under the High Speed Rail (London to West Midlands) Act 2017. Specifically, I have been taken to General Vesting Declaration No. 160 which vests in HS2 the particular land where RMC Garages is located.
3. The Applicants, and I am told approximately 15 others, had entered the property at various times after January 2020. Mr Ackroyd was one of the original occupiers of the property; Ms Zieniuk arrived some two weeks ago at the end of April 2020. Those in the property were there with a view to using it as a protest camp, a base from which to express their opposition to the construction of the HS2 Railway project. It appears that those who have been in the property are not necessarily there all the time; people have come and people have gone. Nevertheless, there has, one way or the other, been a constant presence since January this year. As well as occupying the premises other protesters live near the premises, either in tents or in tree houses that they have constructed, again for the purposes of their protest.
4. Yesterday, 12<sup>th</sup> May, the Second Respondent (bailiffs retained by HS2), were asked to recover possession of the property. The eviction effort went on throughout the day; it paused in the evening; it then recommenced this morning. I am told that the last protester left the site at around about 9 o'clock this morning. In the skeleton argument prepared for this hearing Mr Powlesland states that those in the property resisted their removal "both physically and verbally". It appears to be the Applicants' position that there was some form of violence on all sides; whether that was directed to property or to persons is presently unclear.
5. The Applicants contend that their eviction was unlawful on three grounds. The first question is whether in relation to any of those causes of action the Applicants have demonstrated a sufficient *prima facie* case that at trial they will succeed in obtaining relief in the form that they seek now as interim relief.
6. The first ground is that the process of eviction from the site has involved acts that amount to criminal offences under section 6 of the Criminal Law Act 1977. I am not satisfied that there is a sufficient case that the possibility that offences have been committed under that Act provides a proper basis for the grant of injunctive relief in this case. Even assuming breaches of section 6 of the 1977 Act occurred, I am not satisfied that that would give rise to any private law cause of action that could be relied on by the Applicants. The circumstances in which injunctions are available in aid of criminal law prohibitions are relatively rare and when those circumstances do exist ordinarily injunctions are available only on the claim of those who have responsibility for enforcing the relevant statutory provisions.



7. Mr. Roscoe has taken me to two authorities. The first, *Hemmings and wife v Stoke Poges Golf Club* [1920] 1 KB 720, considered the position in relation to a predecessor statute to the 1977 Act. The conclusion reached in that case was that conduct amounting to a breach of that statute and therefore an offence under that statute did not give rise to any civil liability. The next case is *Secretary of State for Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780. This was a decision of the Supreme Court. It did not deal directly with the point in issue in these proceedings as it was concerned primarily with the availability of injunctions in support of claims of civil wrong. Nevertheless, the judgment of Baroness Hale contains passing reference to the provisions of the 1977 Act and recognition that conduct that might amount, for the purposes of any tort claim, to the use of reasonable force that a landlord or owner of a premises is entitled to use in order to remove trespassers might of itself engage the criminal prohibition at section 6 of the 1977 Act. All that can be said is that, having mentioned those matters, there is no suggestion in Baroness Hale's judgment that the provisions of the 1977 Act grounded any form of civil liability but, as I say, that was not a matter that was squarely before the Supreme Court on that occasion.
8. Nevertheless, having regard to the authority of *Hemmings* and having regard to the provisions of the 1977 Act itself, I do not consider that there is any particularly strong argument (i.e. any argument with any real prospect of success) that breach of section 6 of the 1977 Act gives rise to any form of civil claim available to the Applicants in these proceedings. Mr Powlesland for the Applicants says that the difference may now be made by the existence of the Human Rights Act. It seems to me that if any difference is made by the Human Rights Act it would be in the form of a claim being available under the provisions of that Act directly rather than affecting the position of the availability of any civil claim to arise in aid of or in parallel to breach of section 6 of the 1977 Act.
9. The possibility of a claim under the Human Rights Act is the second basis on which it is said the Applicants have a sufficiently arguable prima facie case. I do not agree that the provisions of the Human Rights Act afford the Applicants any such cause of action. There is doubt, on the submissions I have heard, as to whether the First Respondent is a public authority within the meaning of section 6 of the Human Rights Act. However, I will assume for present purposes that it is such an authority and, on that basis, that in principle a claim is available under the 1998 Act.
10. Mr Powlesland puts the Applicants' case on the basis of breach of Article 8. I am also prepared to accept it is arguable that there has been some breach of Article 8 vis-à-vis the Applicants, although it seems to me that the nature of any interference with the rights under Article 8(1) is very limited indeed. Mr Powlesland submits that the property is the home both of Mr Ackroyd and Ms Zieniuk. But Ms Zieniuk has only been there for a matter of days. Moreover, each entered the premises not as their home but as a site of protest. That is a matter which clearly goes to the extent of any interference with Article 8 rights. Mr Powlesland has been unable to tell me where Mr Ackroyd lived before he moved to the premises or, for that matter, where Ms Zieniuk lived before she went to the premises. There is simply no information that suggests that the premises is, in any genuine sense, the home of either of the Applicants.
11. But even assuming the existence of some form of interference with rights protected by Article 8 the question of justification must be considered. It is inevitable that, were a

breach of Article 8 rights to be demonstrated, a court would conclude that the removal of Mr Ackroyd and Ms Zieniuk was justified. The steps taken to remove them were taken by an owner of land who is seeking to fulfil an important statutory objective.

12. The third cause of action relied on by Mr Powlesland was to the effect that, although both the Applicants were trespassers they nevertheless had better title to the land, or a better right of possession than the First Respondent. Mr Powlesland accepted that this submission that would fall away if the First Respondent's legal right to the land could be demonstrated. In his submissions Mr. Roscoe referred me to the General Vesting Declaration No. 160. On instructions, he has explained to me that that declaration does vest in the First Respondent the land that is the subject of the application in this case (which is shown on the plan attached to that Declaration by reference number 47431). I accept what Mr Roscoe has told me on instructions. The consequence is that the third basis advanced for the claim falls away.
13. For these reasons the application for an injunction fails without the need to consider the balance of convenience. But assuming for the moment that I am wrong in the conclusions I have reached so far as to the likely prospects of success of the causes of action advanced, I would in any event have refused the application for an injunction on the basis of the balance of convenience.
14. Assume for the moment it is arguable that offences may have been committed under section 6 of the 1977 Act. If that is the case it is, in the circumstances of this case also arguable that those protesting, including the Applicants, may themselves have committed offences, for example of assault or criminal damage, possibly also, offences under section 8 of the 1977 Act. The point that this goes to is this: if offences have been committed the correct course of action is to involve the police. I am told, and it is accepted by all parties, that the police were informed of the exercise undertaken by the Second Respondent yesterday and this morning to remove the protesters, and that police officers were present on site from time to time in the course of yesterday. That being so, if it was the case that any criminal offences were being committed the police were well-placed to deal with them and consider for themselves whether they had grounds to suspect that any of the activities that took place yesterday amounted to the commission of a criminal offence by any person.
15. The second point relevant to the balance of convenience is the fact that both the Applicants are trespassers. That is a far from promising starting point for any application for an order that would in substance maintain that trespass. It now appears that the protesters, including the Applicants, have been removed from the premises. In those circumstances, Mr Roscoe says that the request that is now being made of me is to make an order that would effectively reinstate a trespass has come to an end. I do not attach any particular significance to that matter. I accept that when the application was made the Applicants were on the premises. Events have moved on, but that is not a matter that seems to me to be particularly material to whether relief should be granted at this stage.
16. The next point suggested as material to the balance of convenience is that Mr Ackroyd says that he will be left "street homeless" if he is required to leave the premises. I attach very little weight to this matter. Mr Powlesland was unable to tell me where Mr Ackroyd lived before January 2020 when he commenced his protest, but in any event the possibility of being street homeless is not in itself licence to enter

premises unlawfully. Further it is obvious that Mr Ackroyd entered the premises in order to undertake his protest against the First Respondent's construction of HS2, not because of any concerns that he had about being homeless. If the consequence of Mr Ackroyd's removal from the premises is that he is without a roof over his head, his appropriate course of action is to identify his relevant local authority and to apply to that authority for relief. The street homeless point is not a matter then that seems to me to add any significant weight to a balancing exercise in this case as to whether or not I should grant the order requested.

17. I also weigh in the balance that were an order to be made, and were it to turn out at trial that that order had been incorrectly made, it is unlikely that the Applicants would be in a position to satisfy any call for damages that arose in consequence of an interlocutory order having been incorrectly made. Each has offered cross-undertakings in damages, but I cannot see that either has the means to honour the undertaking if called upon to do so. On the other hand, I accept Mr Roscoe's submission that in this case there would be significant costs to the First Respondent were the exercise to remove the protesters from the site either to be halted, or, as events have progressed, to be reversed by order of this court.
18. For all those reasons, my conclusion, had it been necessary to consider the balance of convenience, would be that the balance of convenience falls squarely against granting the interim order the Applicants seek.
19. This application for an interim injunction is refused.

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**This judgment has been approved by the Judge.**



**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice, Strand,  
London. WC2A 2LL

Date of hearing: Wednesday 13<sup>th</sup> May 2020

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**Before:**

**THE HONOURABLE MR. JUSTICE SWIFT**

**Between:**

**(1) STUART ACKROYD**  
**(2) WIKTORIA ZIENIUK**

**Claimants**

**- and -**

**(1) HIGH SPEED TWO (HS2)**  
**(2) HIGH COURT ENFORCEMENT GROUP**  
**LTD (t/a NATIONAL EVICTION TEAM)**

**Defendants**

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**PAUL POWLES LAND for the Claimants**  
**TOM ROSCOE (instructed by Eversheds Sutherland LLP) for the First Defendant**  
**The Second Defendant was not present or represented**

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**APPLICATION FOR AN INTERIM INJUNCTION**  
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Wednesday 13<sup>th</sup> May 2020

A MR. JUSTICE SWIFT: Good morning everyone. Before we start, could I just remind  
everyone on the call that the usual rules apply to this hearing as they do to any hearing  
that is conducted face-to-face, and so in particular any unauthorised recording of the  
B hearing is prohibited by law under the Contempt of Court Act and I believe also under  
the Criminal Law Act 1925. With that reminder given and before we start, let me just  
tell you what I have. From Mr. Powlesland I have your skeleton argument. I have a  
witness statement from Ms Zieniuk and the exhibit to that, which is a photograph of a  
C document presumably handed over by the bailiff yesterday, and also two videos, one not  
being of quite difficult quality, difficult to understand what it is, but the other one is of a  
much better quality. Mr. Roscoe, I have from you your note, thank you for that, two  
authorities, and an extract from Clerk & Lindsell. Is that all that both of you think I  
should have at this stage?

D MR. ROSCOE: You should also have a draft order from me, my Lord. Is that.....?

MR. JUSTICE SWIFT: That is probably with your skeleton, isn't it. Let's have a look.

MR. ROSCOE: It may be on the back of that.

E MR. JUSTICE SWIFT: You are right, I have seen it. Let me just find it. **(Pause)** Yes, I've  
got that. Thank you very much. Mr. Powlesland, I think over to you, please.

F MR. POWLESLAND: Thank you, my Lord. As a brief factual introduction to what  
happened, I was contacted yesterday by a group of protesters who were inside what we  
can call the garages, the property, saying that, as they saw it, an illegal eviction was  
G underway and I have agreed to represent them on a direct access pro bono basis in order  
to have these matters dealt with. Apologies that my skeleton was perhaps not as fulsome  
as it could have been in the circumstances; I was very much under a time pressure  
yesterday afternoon to do that. I was also unaware of HS2's position, and actually I  
have been somewhat surprised by the note from Mr. Roscoe, which does not seem to  
deny or give any factual reason as to why these evictions or the eviction was not against  
section 6 of the Criminal Law Act 1977, which is what I had perhaps expected to  
H happen. You will note from the witness statement of Ms Zieniuk, and indeed the video,  
I think the shorter one, where it is clear there are people trying to violently gain access to  
the building-----

A MR. JUSTICE SWIFT: The second video I gained nothing by way of assistance from that, in terms of I cannot understand what is going on. I mean, clearly there is shouting.

MR. POWLESLAND: Yes.

B MR. JUSTICE SWIFT: There is unidentified people moving around. If there is violence on it, whether it is being perpetrated by person A or person B it is simply impossible to see.

MR. POWLESLAND: In any case it is not being -- in Mr. Roscoe's note it is not being particularly denied that what happened yesterday was using violence, in the sense that it is used in the 1977 Act, which is violence against property or people, and effectively battering in-----

C MR. JUSTICE SWIFT: By the look of it on both sides, from all parties.

D MR. POWLESLAND: Indeed, but it is to do with whether someone is inside the building resisting that, effectively. That is what the 1977 Act is aimed at and in any case there is, I would submit, a serious matter to be tried on that. The thrust of Mr. Roscoe's argument, as I see it from his note, is that in fact even if this was illegal under the 1977 Act it does not ground a civil action and therefore does not ground an injunction. Now that is a surprising submission for a reputable public body to make and I submit it is wrong for a number of reasons. There are at least three bases of action that we would intend to bring as a claim in this matter and which the injunction would be designed to stand alongside. The first is a stand alone claim under the Human Rights Act against HS2, which I submit is a public body and therefore is amenable to section 6 and section 7 of the Human Rights Act which allows stand alone claims to be brought against public bodies who breach the Articles in the Human Rights Act, and the clear breach in this case is Article 8, which is that everyone has the right to respect for his private and family life, his home and his correspondence. It is clear, I submit, or there is-----

G MR. JUSTICE SWIFT: Pause there a second. Just in terms of whether HS2 is an appropriate Human Rights Act defendant, let's just look at this, shall we, looking at the Act. Why do you say that HS2 Ltd is a Human Rights Act public authority?

H MR. POWLESLAND: Well I say that there is at least a serious question to be tried about that, because it is a company that is wholly owned, I believe, by the Secretary of State and Her Majesty's Government. It is a company that is purely in existence for the carrying out of a large public infrastructure project and where all its powers to act have



A been granted under an Act of Parliament and it has been granted powers that are far in  
excess of what ordinary citizens, private citizens have to do. They are in effect  
governmental powers and therefore the fact that it is a limited company and that is the  
way the government has structured the construction of HS2 does not, I submit, stop it  
B being a public body and I submit that there is a serious question to be tried at least about  
whether HS2 are a public body.

MR. JUSTICE SWIFT: And what do you say is the breach of Article 8, and whose Article 8  
rights are we talking about?

C MR. POWLESLAND: Both the claimants in this case were living in the property at the time  
the eviction took place and it was their home. Mr. Ackroyd has been made street  
homeless.

MR. JUSTICE SWIFT: Just pause there. Both claimants entered the premises in January. Is  
that right?

D MR. POWLESLAND: I am instructed that Ms Zieniuk entered two weeks ago.

MR. JUSTICE SWIFT: So C2 since the end of April; and just pausing there, where did she  
live before then?

E MR. POWLESLAND: I believe she was living with relatives, so in effect sofa-surfing. You  
will see in my skeleton that I say that she has been made homeless, not street homeless.

MR. JUSTICE SWIFT: No, no. Where was she living before?

MR. POWLESLAND: I don't have instructions on that, my Lord.

MR. JUSTICE SWIFT: Which part of the country?

F MR. POWLESLAND: I don't have instructions.

MR. JUSTICE SWIFT: Okay, so living with relatives. You don't have any idea whether it is  
anywhere near the property in Harefield.

G MR. POWLESLAND: I don't. I should say, my Lord, it is difficult for me because  
yesterday I was effectively taking instructions from people over the phone with people  
who were -- Mr. Ackroyd was also inside the property while this was happening and it  
was not easy to take instructions from them whilst-----

H MR. JUSTICE SWIFT: Please don't assume any of this is directed as criticism to you, it is  
not, Mr. Powlesland, but you will appreciate that any person, and by this I mean your

A clients, who are seeking injunctive relief from the court are asking the court to take a very serious step.

MR. POWLESLAND: Yes.

MR. JUSTICE SWIFT: This is not done off the cuff.

B MR. POWLESLAND: Indeed.

MR. JUSTICE SWIFT: So that is the second claimant. Mr. Ackroyd, the first claimant, when did he move in?

MR. POWLESLAND: I am instructed that it has been for a number of months. I don't know if it was from January but he has been living there for a considerable time and he has

C nowhere else to go as well. He is effectively-----

MR. JUSTICE SWIFT: Where was he living before January?

MR. POWLESLAND: I don't know, my Lord. I don't know. He is an environmental

D protester, effectively, and he has been -- he has nowhere else to go. He may be able to live in a tent on land nearby, but-----

MR. JUSTICE SWIFT: He will be able to approach the relevant Local Authority and ask for assistance. I don't know where his home Local Authority is.

E MR. POWLESLAND: My Lord, it is not just about whether there is in fact a right to be housed. Article 8 does go beyond that, it protects someone's home.

MR. JUSTICE SWIFT: It does not provide a right to be housed.

MR. POWLESLAND: Sorry?

F MR. JUSTICE SWIFT: Article 8 does not provide a right to be housed.

MR. POWLESLAND: Exactly, indeed. What it does is protects someone's home, even if you are a trespasser.

G MR. JUSTICE SWIFT: You were just making the point about him being homeless and I was just suggesting that, not knowing where he was living before January obviously one lacks an important bit of context, but the answer to any risk of street homelessness in the present circumstances would be for him to identify his relevant Local Authority and to request their assistance in the first instance. The answer to homelessness is not

H necessarily continued trespass.

A MR. POWLESLAND: No, but I would say that Article 8 is not concerned with homelessness, as you note, it is concerned with protection for home, even if you are a trespasser. Now ordinarily-----

B MR. JUSTICE SWIFT: And what authorities do you rely on to say that Article 8 protects rights as a trespasser?

C MR. POWLESLAND: It is contained within the Article itself: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society". I submit in those circumstances that there is a serious question to be tried about whether a public body, and that is what I submit HS2 is, can interfere with someone's home, and it is clear that for both Mr. Ackroyd and Ms Zieniuk that it was their home, when it is not in accordance with the law, and this is what goes back to Mr. Roscoe's point about the Criminal Law Act. We are saying: well it's just a criminal offence. Well exactly. In D breaking into the premises yesterday HS2 I submit there is a serious question to be tried about whether they were not acting in accordance with the law, and as a public body, therefore, by violently evicting people from their home I submit there is a real case to be tried that this was not in accordance with Article 8.

E MR. JUSTICE SWIFT: Okay. So you have said there were other causes of action. We have dealt with the Human Rights Act. What is the next one please?

F MR. POWLESLAND: An ordinary possession claim. It is stated by Mr. Roscoe that there can be no such claim because they are trespassers. That is not in fact true. It is trite law in English law that those in possession of land, even if a trespasser, have a title that is good against the world except for anybody who has a superior title.

G MR. JUSTICE SWIFT: Pause there. At the moment you are trying to identify causes of action. So you say the claimants would have a cause of action to deny HS2, the freeholder of the premises, access to those premises.

MR. POWLESLAND: We have no evidence that in fact they are the freeholder of those premises.

H MR. JUSTICE SWIFT: Assume they are. I am just trying to work out what this cause of action is.



A MR. POWLESLAND: Yes. The effect of this, my Lord, is if it were shown now that HS2 were in fact the freeholder I do not think this part of the claim could fly. The issue in this case is that because of the way that HS2 has done this, i.e. without going to court and without properly-----

B MR. JUSTICE SWIFT: Take it a step at a time, please.

MR. POWLESLAND: Yes.

MR. JUSTICE SWIFT: So you say if HS2 is the freeholder this particular cause of action would not work. Let's assume HS2 has an interest in land short of freehold, on what legal basis might this claim work in those circumstances?

C MR. POWLESLAND: The issue is, and I do need to say this at the very start, the key point about this head of claim is that we don't know what HS2's interest is. They have presented no evidence of them having any interest in this land whatsoever and neither have the bailiffs, so at the moment there is a serious question to be tried about whether D HS2 has any interest in this land.

MR. JUSTICE SWIFT: HS2 may not in fact have any legal right to occupy the land. Is that right?

E MR. POWLESLAND: No evidence has been presented of that, such that I know. And it would have perhaps been very simple yesterday-----

MR. JUSTICE SWIFT: So what is this cause of action then?

MR. POWLESLAND: Possession against a trespasser.

F MR. JUSTICE SWIFT: So one trespasser. You just need to educate me slightly. What is the legal basis of this cause of action please?

G MR. POWLESLAND: It would be for possession against a trespasser, because it is trite law that if the bailiffs were acting for someone without a legal interest in the land then they would not be able to evict trespassers -- sorry, people who had previously trespassed on the land, because those trespassers have a possessory title good against the world except for anyone with a better title, and therefore it is axiomatic that HS2 have to show an interest in the land and there is no evidence so far presented they have in fact got that, and this is, of course, why it is very important in cases such as these for people to go H through the ordinary legal process to get a possession order so that they can go to court, present their title and everyone can be clear what their interest in the land is.

A MR. JUSTICE SWIFT: I have got that cause of action. Are there any further causes of action you rely on?

B MR. POWLESLAND: Yes, the final one would be a judicial review claim which would be as again there is a serious question to be tried about whether HS2 is a public body, and the ground would be illegality, in the sense that they made a decision yesterday to evict in circumstances that were illegal under section 6 of the Criminal Law Act and that would be a challengeable decision for a public body to deliberately make a decision to act not in accordance with the criminal law, and it is actually, I would submit, rather extraordinary that a public body has in fact done that seemingly. Those are the three grounds.

C MR. JUSTICE SWIFT: You say, your position is well there is violence on both sides as being yesterday, maybe there is today, I don't know what the position is.

D MR. POWLESLAND: Sorry, my Lord, you've just frozen for a second.

MR. JUSTICE SWIFT: Can you hear me now?

MR. POWLESLAND: Sorry, yes. Say that again; apologies.

E MR. JUSTICE SWIFT: You were saying you were accepting that there was violence on both sides yesterday, possibly today as well, I don't know. In relation to this third ground of challenge let's assume for the moment that HS2 Limited is susceptible to judicial review.

MR. POWLESLAND: Yes.

F MR. JUSTICE SWIFT: Although, quite frankly, given the way in which you have put the case it doesn't really matter whether this is a public body or not, it does not matter whether this is a judicial review claim or not, you are effectively saying HS2 set out to commit a crime and that is something that should be restrained. Now the fact that HS2 decided a few days ago it wished to have possession of this land is not the same as saying it decided to commit an offence under section 6 of the 1977 Act because it all depends on what happens when the attempt to obtain possession gets underway, and so characterising HS2's decision to obtain possession as being a decision to commit an offence under section 6 seems to me to be a non sequitur.

H MR. POWLESLAND: To carry out a course of action that was likely to result in the commission of a criminal offence.

A MR. JUSTICE SWIFT: No, not at all, asking somebody to get off your property.

MR. POWLESLAND: That's not what happened. They sent in a team of I think dozens of bailiffs equipped with-----

MR. JUSTICE SWIFT: When I am talking I cannot listen to you and speak at the same time.

B MR. POWLESLAND: Apologies. It is slightly to do with the lag on the video. Apologies, my Lord.

MR. JUSTICE SWIFT: Right. Asking somebody to leave your land, even encouraging them to leave your land is not a threat of violence.

C MR. POWLESLAND: My Lord, that is not what happened, I submit. This is not a friendly surveyor from HS2 who went to the property and nicely asked people to leave. They sent in a team of I think dozens of bailiffs at 5 a.m. in the morning equipped with tools and equipment and presumably with the order to force entry if necessary, because if they did not have that order then the first defendants are acting beyond the instructions of their client. So either HS2 gave that order to effect entry with violence, or the first defendant went beyond the instructions of the land owner, the alleged land owner. Either way I submit this injunction should be granted.

D MR. JUSTICE SWIFT: And how does this third cause of action differ from the cause of action you set out in the skeleton argument? It seems to me to be the same.

E MR. POWLESLAND: Yes. Effectively, it is all based around the issue of section 6 of the Criminal Law Act. I have just put it into those three categories to deal with the point in Mr. Roscoe's note that this has no basis as a civil action, and that is why I have put it into those terms now that I understand that is HS2's position. But effectively it is, yes, all based on the fact that the conduct of HS2, their employees, servants or agents yesterday, there is a serious case to be tried that it amounted to a criminal offence under section 6 of the Criminal Law Act.

F MR. JUSTICE SWIFT: Okay. What else would you like to say?

G MR. POWLESLAND: Just very briefly in relation to the other factors, I submit that damages would not be adequate in this case because, as you have already noted, the people inside are trespassers but they have still lost their home and damages are likely to be negligible but they have lost their home at a time of deep national crisis, as you know, and being homeless at a time when you are supposed to be confined to your home due to the threat



A of coronavirus I submit is a serious matter indeed, and therefore damages in this case would be wholly inadequate.

MR. JUSTICE SWIFT: Just pause there. If Ms Zieniuk entered the property at the end of April 2020 she left where she was living during the period of the lockdown to go and live at this garage.

B MR. POWLESLAND: I don't know why that was, but that does not apply to Mr. Ackroyd I believe, and-----

MR. JUSTICE SWIFT: But it would be the case for her.

C MR. POWLESLAND: Yes, but in any case she has at this time lost her home and that, I submit, will not be adequately compensated in damages. A similar factor goes for the balance of convenience in this matter. Although Mr. Roscoe has pointed to the cost to HS2 I submit that the cost of another bailiff's operation for a large well-founded public body such as HS2 is not comparable to loss of a home and also there is a serious matter D in the balance of convenience here that I would submit the court should be alert to hearing and stopping claims and preserving positions in cases where a public body wholly owned by Her Majesty's government is alleged to have committed a serious E criminal offence, and there is a serious question to be tried about that. There is a certain lawlessness, I submit, to what HS2 is alleged to have done here and the court should provide a remedy for that beyond just declarations and damages, which is all we would be able to get if the interim injunction is not granted today.

F MR. JUSTICE SWIFT: I note from Mr. Roscoe's document that the police are aware of the operation and were on site from time to time in the course of yesterday. Do your instructions confirm that or do they say something different?

G MR. POWLESLAND: I am instructed that the police were called and were on site yesterday but chose not to intervene. We do not know why that is, but actually in many ways I submit that that is another factor in favour of the claimants, that apparently the police do not wish to do their job in this case and-----

MR. JUSTICE SWIFT: You say that. It may be they don't think there is a job to be done.

H MR. POWLESLAND: Well that is surely a matter to be determined by the court at a full hearing, and there is clear prima facie evidence of breach of section 6, and what is interesting is that not only is there prima facie evidence but that no rebuttal of that has

seemingly been presented by HS2 and it does not seem to be a plank of their case that section 6 was not breached. There is a serious question to be tried about whether it was and therefore in the circumstances we-----

MR. JUSTICE SWIFT: I think Mr. Roscoe's position I suspect will be this: that it is not to the point whether there has been a breach or not, it is simply not a matter that founds an application for an injunction. That is the gist of his submission. I don't think he was accepting anything.

MR. POWLESLAND: Well I have said why I think it does or I submit it does found an injunction. But also, in relation to the police, there are many reasons why the Police Force may not choose to intervene. It may not be the (unclear) of their resources at the same time and I have actually been on the other end of this argument many times fighting against injunctions being placed against environmental protesters where land owners seek to have similar provisions in civil law as to those in the criminal law, for instance, not to block roads, etc., etc., etc., and when questioned about that they say: well the police may have many reasons why they do not want to intervene and we are entitled to the civil law remedy, and therefore, regardless of any criminal law that covers the same matter we are still entitled to that, and I submit the same still goes, even if the police have chosen not to intervene, the fact is if there is a civil remedy, and I have submitted already that there are three separate bases that there is a serious question to be tried here, we are entitled to that remedy.

MR. JUSTICE SWIFT: Is there anything further you would like to say?

MR. POWLESLAND: No, my Lord.

MR. JUSTICE SWIFT: Thank you very much. Just give me a second, Mr. Roscoe. **(Pause)**  
Yes, go ahead.

MR. ROSCOE: My Lord, good morning. The first thing I think to make clear from my perspective, as I did in my skeleton argument, is that I appear only on behalf of HS2 Limited, the first respondent, and not High Court Enforcement Group Limited, who are the company who have actually carried out the alleged actions which are complained about, and the second and related point is that although I appear on short informal service on behalf of the first respondent this is technically still a without notice application.

service on behalf of the first respondent this is technically still a without notice application.

A MR. JUSTICE SWIFT: Yes.

B MR. ROSCOE: And so there is nothing surprising at all about me not saying anything  
substantive about the underlying facts in circumstances where we simply have not got to  
the bottom of them in the lack of business hours between being served with this  
application and this hearing. So for the purposes of argument, for the sake of argument,  
C I am assuming that there is prima facie evidence of a breach of section 6 of the Criminal  
Law Act 1977 by somebody, but no more than that. My client's position in respect of  
that is entirely reserved and if and when there is a return date it may be that there is  
something more that needs to be said about it. Equally, High Court Enforcement Group  
Limited may, if as and when they are served, wish to say something about it themselves.  
That is the first point.

D Thereafter, my Lord, the big picture point here is that what my learned friend is  
asking for is now, in fact, not an order that an unlawful, as he puts it, eviction should be  
stopped, because the building is empty now, they are actually seeking an order from the  
court that they should be allowed to trespass again, they are seeking the court's  
assistance to commit a tort, which in my submission is a striking proposition and really  
when framed correctly in that way that is the end of the matter. If there has been some  
E actionable wrong in the past, civilly actionable wrong in the past, then it may found in  
damages.

F MR. JUSTICE SWIFT: Mr. Roscoe, you say that there is no one now in the premises. What  
is the source for that information please?

G MR. ROSCOE: That was my instructions this morning from a representative of HS2 who as  
I understand it had been informed of that by the High Court Enforcement Bailiffs on the  
ground.

H MR. JUSTICE SWIFT: And when did the last person leave?

MR. ROSCOE: If you will bear with me on moment, please, my Lord.

MR. POWLESLAND: If it would assist the court, my instructions are similar to Mr.

Roscoe's and I was told at about I think nine o'clock this morning the last protester had  
been removed, but that might be similar to your instructions, Mr. Roscoe.

MR. ROSCOE: Yes, that chimes approximately with my instructions, my Lord.

MR. JUSTICE SWIFT: Okay.



A MR. ROSCOE: So that is the position on the ground. I made the obvious point I hope in my submissions that an interim injunction has to be interim to something, interim to a substantive claim, and indeed the court will, if it makes an interim injunction before the issue of a claim, direct that a claim be brought, so it is important, in my submission, to identify what that claim is, as my learned friend has attempted to do this morning.

B The first point is, and it is quite a stark submission, but in my submission it is correct, that breach of section 6 of the Criminal Law Act does not sound in damages or, sorry, does not give rise to any civil cause of action at all. It provides on its face that a person who uses violence to secure entry to property, premises, may be liable to on  
C summary conviction up to a six month term of imprisonment or a fine up to Level 5 of the standard scale. That is what Parliament has set out; it gives rise to criminal liability. It does not give rise to any civil cause of action. My Lord, a land owner as a matter of common law as a matter of its civil law rights has power to use reasonable force to  
D remove people from his property. I sent, together with my brief note, three authorities in support of that proposition, and, my Lord, if I might briefly take you to them.

MR. JUSTICE SWIFT: Yes, I have *Secretary of State for the Environment v Meier and Hemmings*.

E MR. ROSCOE: Yes, my Lord. If we could start please with *Meier*, a more recent starting point.

MR. JUSTICE SWIFT: Yes.

F MR. ROSCOE: If I could ask you please to turn up Baroness Hale's speech at page 2789, which is page 9 of the PDF.

MR. JUSTICE SWIFT: Right, one second. **(Pause)** Right, 2789, I am there. Whereabouts please?

G MR. ROSCOE: Starting the third line down: confirmation that no civil wrong is done by turning out a trespasser using no more force than is reasonably necessary.

MR. JUSTICE SWIFT: Right.

H MR. ROSCOE: The overlay of the Criminal Law Act is that, whilst there is a common law right to use reasonable force and a civil wrong may thereby be committed, there is a risk that in exercising the civil law rights you may commit a criminal wrong at the same time, which is subject to the criminal sphere not the civil one. **(Pause)**

MR. JUSTICE SWIFT: Right. Does Baroness Hale deal with this apparent conundrum?

MR. ROSCOE: Sorry my Lord, did you say “apparent conundrum”?

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: Well she goes on to refer to between C and D on that page that old laws about enforceable ejectment and so forth have now been replaced by section 6 and notes that it prohibits the use of threat or violence.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: But you can see, my Lord, that that is talking about the utility of the remedy where a criminal statute has something to say about it, it is not-----

MR. JUSTICE SWIFT: Before you continue let me just have a quick look at the headnote just to see what was going on in this case.

MR. ROSCOE: Certainly, my Lord. (Pause)

MR. JUSTICE SWIFT: So that case itself was simply about trespass and the availability of injunctions to prevent or bring trespass to an end.

MR. ROSCOE: My Lord, yes. What had happened in that case is that there were a group of travellers who were occupying a site on certain woodland and the Secretary of State sought a possession order not only over the woodland that the travellers were on but on other woodland elsewhere in the country; essentially they wanted a pre-emptive possession order because they were concerned that once moved on from the plot that they were on the travellers would simply move to another site.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: And the question in that case was: can you have a pre-emptive possession order? And the answer is “no” because you can only get a possession order if you have been dispossessed and until you have been dispossessed you cannot get one, and so Baroness Hale there is discussing the remedies that are available to somebody when trespass of the land is threatened or has just occurred.

MR. JUSTICE SWIFT: Right. So going back to paragraph 27 of Baroness Hale's judgment.

MR. ROSCOE: Yes.

MR. JUSTICE SWIFT: She is talking there about the availability of self-help remedies, which is why she talks about use of no more than reasonable force.

MR. ROSCOE: Yes.

A MR. JUSTICE SWIFT: She then mentions in that paragraph the possibility of offences under section 6 of the 1977 Act.

MR. ROSCOE: Yes.

B MR. JUSTICE SWIFT: And where does this line of reasoning end up in terms of any drawing together of those two parallel streams?

MR. ROSCOE: It doesn't there, my Lord. The reason that I took your Lordship to that was simply to illustrate the proposition that what *Hemmings* stands for is still good law. Where it leads to-----

C MR. JUSTICE SWIFT: So whatever Baroness Hale is saying in paragraph 27 it does not amount to saying that the common law ability to use reasonable force has fallen away because of section 6 of the 1977 Act.

D MR. ROSCOE: Indeed, my Lord. And nor does it say that section 6 gives rise to any civil cause of action. As I will come on to explain in a moment, it is my submission it is tolerably clear that it does not.

MR. JUSTICE SWIFT: Just a second. **(Pause)** Thank you.

E MR. ROSCOE: So, my Lord, that case cited with approval still as good law the case of *Hemmings* which was to do with forceable entry acts, and if I can ask your Lordship just to turn up that report, please.

MR. JUSTICE SWIFT: Yes. Let me just look at the headnote here.

F MR. ROSCOE: Yes, my Lord. Very briefly this was a case where a servant who occupied a cottage on a golf course was given notice to quit, wouldn't leave, he wasn't a tenant and the agent of the golf course came and forcibly removed him and his wife from the property.

MR. JUSTICE SWIFT: Yes.

G MR. ROSCOE: And your Lordship can see the judgment of Banks LJ at page 730.

MR. JUSTICE SWIFT: I am at 730. Whereabouts on the page?

H MR. ROSCOE: The final paragraph you can see the learned Lord Justice there says: "The action was brought to recover damages for forceable entry and for assault founded upon an alleged infringement by the defendants of this older statute which enacts that a forceable entry is a punishable offence". In other words it is the precursor to section 6 of the Criminal Law Act. **(Pause)**



MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: And the judge below had found that that did give rise to a civil cause of action and the Court of Appeal, as you can see in the final sentence of that page, has assumed for the purpose of appeal that there was in fact forceable entry within the meaning of the Act.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: Turning on then, my Lord, to page 734.

MR. JUSTICE SWIFT: Yes, 734.

MR. ROSCOE: The middle paragraph summarises the reasoning for that point, that there is no remedy for the plaintiffs unless they can show that the statute gives them one by implication.

MR. JUSTICE SWIFT: Okay, I have read that paragraph.

MR. ROSCOE: And then you can see in conclusion the Court of Appeal there thought that it did not give them any such right, and you can see that at page 737.

MR. JUSTICE SWIFT: Whereabouts on that page, please?

MR. ROSCOE: Starting about halfway down: "In the present case..." in the middle of the line.

MR. JUSTICE SWIFT: Yes, I will just read that. **(Pause)** Okay, I have read to the end of the judgment.

MR. ROSCOE: So you see, my Lord, that the point being made there is it may be if more force than is reasonably necessary is used it may give rise to other causes of action, other tortious causes of action, but the mere fact that there is a breach of the forceable entry statute, or here section 6, does not in itself give rise to any civil cause of action. **(Pause)**

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: To conclude this point very briefly, my Lord, the third PDF I have sent you was an extract from Clerk & Lindsell.

MR. JUSTICE SWIFT: Yes, I have that.

MR. ROSCOE: And your Lordship will see there at paragraph 30-13 which is on page 3 of the PDF.

MR. JUSTICE SWIFT: Yes, re-entry on land, is that the one?

A MR. ROSCOE: Yes indeed, my Lord. The final sentence is the pertinent one, and that  
provides that the Criminal Law Act enacts more general restrictions on self-help to  
recover land but the effect of these provisions in civil law is also doubtful. The authority  
there cited is *Hemmings*, and in light of the submissions I have made on *Hemmings* I  
B think “doubtful” is putting that proposition slightly highly or cautiously, depending on  
one’s perspective.

MR. JUSTICE SWIFT: Yes.

C MR. ROSCOE: So, in my submission, there is no serious issue to be tried on the mere breach  
of section 6. That then leaves the new cause of action that my learned friend raised this  
morning.

MR. JUSTICE SWIFT: Yes, well there were two of them. The first is the Human Rights Act  
claim.

D MR. ROSCOE: Yes. My Lord, the first thing to say is that, of course, even if there was a  
claim for damages or anything else under the Human Rights Act, it does not, of course,  
follow that it is appropriate to put the people back into possession in the meantime. That  
is a separate question. Just taking the first question, it rests, of course, on the proposition  
that HS2 is a public authority for these purposes.

E MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: Your Lordship asked about that point. I do not believe your Lordship-----

F MR. JUSTICE SWIFT: There are a number of public law cases involving HS2, but not  
usually as the first defendant, usually as the second defendant and the Secretary of State  
has been in the lead position.

MR. ROSCOE: Yes.

G MR. JUSTICE SWIFT: Have any of those authorities had to deal with the question of  
whether HS2 Limited is either a public authority for common law purposes or a Human  
Rights Act public authority?

MR. ROSCOE: My Lord, I am afraid I do not know. It was not a point I had been expecting  
and I must confess I have done a certain number of these cases for HS2 but not on that  
point.

H MR. JUSTICE SWIFT: Yes.

A MR. ROSCOE: The point which I was going to make for narrow purposes is, as your Lordship may have had in mind, section 6(1)(5) of the Human Rights Act which, if your Lordship has it in front of him I am looking at page 1519 of volume 2 of the latest White Book, if your Lordship has that at hand?

B MR. JUSTICE SWIFT: I've just got the Human Rights Act in front of me separately.

MR. ROSCOE: Yes, it doesn't matter where. At section 6(5) it says: "In relation to a particular act---

MR. JUSTICE SWIFT: Yes.

C MR. ROSCOE: --- a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private".

MR. JUSTICE SWIFT: Yes.

D MR. ROSCOE: And, my Lord, here: why, I ask rhetorically, is HS2 in any different position from any other person, private land owner who seeks to remove squatters from a building so that he can carry out works on the land?

MR. JUSTICE SWIFT: Yes. **(Pause)** Okay.

MR. ROSCOE: The second point, my Lord, is that of relative title.

E MR. JUSTICE SWIFT: Just before you move on from the Human Rights Act claim, the question I need to think about is this, isn't it: if a Human Rights Act claim is pursued to trial is there a serious prospect that after trial the claimants would get the relief they now seek?

F MR. ROSCOE: My Lord, let me address you on that briefly. Your Lordship is quite right to raise the point.

G MR. JUSTICE SWIFT: And obviously if a Human Rights Act claim were taken to trial, even if there was some form of interference, and that may well be open to evidential doubt, given the circumstances in which the claimants came onto the land, there would still be the question of justification.

H MR. ROSCOE: My Lord, yes, there is the question of justification that we need the land, but in terms of the ultimate relief to be granted, they are here trespassers, and if a possession claim had been brought it is an abridged and summary process, as your Lordship will be aware, which in the case of non-residential property like this requires only two days' notice of service. So had that procedure been gone through, and for present purposes

A your Lordship might also note that the practice direction to stay the proceedings does not  
B apply to trespassers such as these, had the process been gone through they could have  
C been removed in a summary process. In those circumstances, if any claim were to be  
D brought it would be met immediately with a possession claim as a counterclaim which  
E would be bound to proceed, and so even if some limited actionable interference with the  
F right was made out, at best it would sound, in my submission, in a modest payment of  
G damages; the court is not going to condone, not going to give an injunction to permit  
H continued trespass for any lengthy period of time.

MR. JUSTICE SWIFT: Yes. On that analysis, if possession proceedings were brought the  
Human Rights Act issue may well be raised as a defence in those proceedings and so  
whether or not possession was granted would require the court to look into what it  
thought to be the merits of the Human Rights Act claim.

MR. ROSCOE: My Lord, yes. There is now very, very clear guidance, for example in  
claims like *Manchester Ship Canal*, I think the *Malek* claim in the House of Lords, many  
of the HS2 proceedings, and many of the fracking proceedings which my learned friend  
has been involved in, which says that in the case of trespassers who are occupying land  
for the form of protest their human rights do not amount to a defence to a possession  
claim by the land owner, they do not even require the claim to proceed to trial as  
opposed to being disposed of summarily. So yes, such arguments would be raised. In  
practice they are bound to fail.

MR. JUSTICE SWIFT: Which takes me to my second point: is HS2 the freeholder of the  
land?

MR. ROSCOE: My Lord, it is not the freehold owner.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: It has certain statutory powers to take possession of land. In this case, just  
let me make sure I have got the right material in front of me so I do not lead your  
Lordship astray. **(Pause)** The Secretary of State has executed what is called a General  
Vesting Declaration; it is a means of compulsory purchase which permits it to take  
possession of the land.

MR. JUSTICE SWIFT: And what interest or rights over the land does that Vesting Order  
give it?



A

MR. ROSCOE: When I said “no” I think the answer is “yes”; it entitles it to be registered as the freehold owner. Whether or not it has yet been registered I do not know, but certainly it is land to which the Secretary of State is entitled to possession by virtue of the statutory General Vesting Declaration scheme.

B

MR. JUSTICE SWIFT: And that scheme, is that in secondary legislation somewhere?

MR. ROSCOE: Let me just take very brief instructions, if I may.

MR. JUSTICE SWIFT: Yes, I can have a look at that on Westlaw if it is. I dare say it is a complex document, but who knows, there may be a simple part of it.

C

MR. ROSCOE: My Lord, yes. **(Pause)** Yes, my Lord, it is section 4 of the High Speed Rail (London to West Midlands Act) 2017.

MR. JUSTICE SWIFT: You are running ahead of me to look things up. So is section 4 the enabling power?

D

MR. ROSCOE: Section 4 of the High Speed Rail (London to West Midlands) Act 2017, the High Speed Rail Act, gives the power to the Secretary of State to acquire compulsorily so much of the land within scheme limits as it requires for these purposes.

MR. JUSTICE SWIFT: So that is the starting point, yes.

E

MR. ROSCOE: That is the starting point. It has then executed General Vesting Declarations to take possession of this land, and that is what it has done.

MR. JUSTICE SWIFT: And are those declarations made by statutory instrument or by some other means? I am assuming it is some sort of secondary legislation but I am not quite sure what species.

F

MR. ROSCOE: It is done by deed, so the power is given to the Secretary of State to acquire compulsory purchase effectively which it executes by deed subject to those powers.

G

MR. JUSTICE SWIFT: I am just going to the 2017 Act just to see how this works. I am just getting it up now. **(Pause)** Section 4. **(Pause)** The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Act were a compulsory purchase order”. So let’s just see how it works. **(Pause)** Okay, looking at the 1981 Act, Compulsory Purchase (Vesting Declarations) Act, section 4, it looks like simply that there needs to be a declaration executed in a prescribed form.

H

MR. ROSCOE: My Lord, yes, that may well be right. I have got in front of me the declarations that were in fact made by the Secretary of State in respect of this land.

A MR. JUSTICE SWIFT: Right, yes.

MR. ROSCOE: I don't know whether that would be useful for me to provide to you electronically now so you can see what they look like.

B MR. JUSTICE SWIFT: Yes, if you can. By the way I can still hear you very well but your video is frozen. By all means please send those documents through to my clerk, if you would.

MR. ROSCOE: Has that worked now? Am I moving again?

MR. JUSTICE SWIFT: No, you're not, but the audio is absolutely fine and Mr. Powlesland I can still see, so it must just be one of these gremlins I am afraid. **(Pause)**

C MR. ROSCOE: Right, I have sent those across, my Lord.

MR. JUSTICE SWIFT: Okay, carry on and when they come through to me I will look at them; we will take a look at them then. Is there anything else that you want to say about the Human Rights Act claim?

D MR. ROSCOE: No, the Human Rights Act claim I have said everything I want to say about. Similarly, all I was going to say about the trespass claim is that my learned friend is right in the sense of the principle of relative title.

E MR. JUSTICE SWIFT: Yes.

F MR. ROSCOE: Possessory title is a title of sorts, it is the weakest form of title; somebody in possession has the right to exclude others who have no right to be there at all, but here, of course, where the Secretary of State and his statutory undertaker HS2 Limited thereby actually have a right to possession under the statutory regime, it is unarguable to suggest that any trespass claim here is going ultimately to work to require the defendants to be let back into possession of the land.

MR. JUSTICE SWIFT: Yes, I think Mr. Powlesland accepts that. His query was as to the nature of the right to the land that HS2 has.

G MR. ROSCOE: My Lord, yes. The nature of without notice injunctions like this, I make the point lightly, but it is not really for us to prove our own title pre-emptively. If we are going to be dragged to a return date of some sort then we will do so.

H MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: But in my submission it ought not to get to that. So that is what I have to say about the substantive causes of action.

A MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: I don't know if those documents have made it to your Lordship.

MR. JUSTICE SWIFT: Not yet. I will just check my emails. **(Pause)** No, not yet. Have they arrived with you?

B THE CLERK: Apologies, sir yes, and I forward them to you straightaway.

MR. JUSTICE SWIFT: They have just arrived now. Let me just open these documents.

**(Pause)** I have got the documents; I have opened them. Mr. Powlesland, do you have these documents as well?

C MR. POWLESLAND: I think they have just arrived.

MR. JUSTICE SWIFT: We will give you a moment then just to make sure you can open them as well. **(Pause)**

MR. POWLESLAND: I am just looking at them now.

MR. JUSTICE SWIFT: Thank you. Tell me when you are happy for Mr. Roscoe to carry on.

D **(Pause)**

MR. POWLESLAND: Yes, it would be useful just to know which of the three plans it is said relate to the garages themselves.

E MR. JUSTICE SWIFT: Yes, when Mr. Roscoe has a chance to explain the documents he will tell us that.

MR. POWLESLAND: Thank you.

MR. JUSTICE SWIFT: I wanted to make sure that you had them and you have got them open. Mr. Roscoe, are you ready to go ahead?

F MR. ROSCOE: My Lord, yes. If we look, please, at the first of those documents, it is Vesting Declaration No. 160 in the second line to the title.

MR. JUSTICE SWIFT: Yes, I have got that one, yes.

G MR. ROSCOE: This is the one that is, as I understand it, the relevant one and if one turns to the final page of that document - I am afraid it is 90 degrees off.

MR. JUSTICE SWIFT: Yes, I am there.

MR. ROSCOE: But if one turns their head, I am instructed that-----

H MR. JUSTICE SWIFT: We can rotate the document.

MR. ROSCOE: Rotate the document.

MR. JUSTICE SWIFT: I can see Dews Farm is hatched in red or pink.

A MR. ROSCOE: Yes indeed. So I am instructed that the smaller plot to the right labelled 47431---

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: --- is, I am instructed, the garage. For what it is worth-----

B MR. JUSTICE SWIFT: We need to go back into the substance of the Vesting Declaration to see what exactly is done with this.

MR. ROSCOE: My Lord, yes. **(Pause)**

C MR. JUSTICE SWIFT: Right. “(Loss of audio) ... vests in the authority as from the end of the period of 93 days from service of the notice.” So this is 13<sup>th</sup> May 2019 and -- yes, okay, I have got that. Thank you.

MR. ROSCOE: So that is the broad approach here. For what it is worth, at the risk of over-complicating, and I am afraid I do not have all the documents to hand, these pink plots sit in a sea of white of surrounding land.

D MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: Much of that land is also now in the possession of HS2, pursuant to its powers under schedule 16 I believe of the Act to take temporary possession of the land. I just say that by way of broader context.

E MR. JUSTICE SWIFT: Okay. Do we need either of the other two documents, Mr. Roscoe?

MR. ROSCOE: My Lord, no, I was not quite sure what was what; I have been bombarded with a number of documents myself.

F MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: My Lord, if we were to be forced to come to a return date, if some form of relief was to be granted, it may be that -- I am sure it would be that HS2 could set out in a bit more detail in a witness statement quite how this works, but the position sitting in front of you today, my Lord, is you have Mr. Powlesland saying and recognising that his clients have no title at all, no right to be there at all, and you have me on behalf of HS2 saying HS2’s position is it is it’s, here is the documents which show how that works.

G MR. JUSTICE SWIFT: Yes.

H MR. ROSCOE: Which is whether there is a serious issue that the protesters have some better rights than HS2 and in these circumstances I invite your Lordship to conclude quite obviously not.



A MR. JUSTICE SWIFT: Yes, thank you. Are we into the balance of convenience now?

MR. ROSCOE: My Lord, yes.

MR. JUSTICE SWIFT: Okay, go ahead.

B MR. ROSCOE: Briefly here, will damages be an adequate remedy to the protesters? In my  
submission “yes”. To the extent this is a home it is one that has been occupied for a  
short period, it was only ever going to be temporary, it is not a residential structure and  
(unclear) to squat. If they are deprived from use of that for a short period that is  
evidently compensatable in damages. On the other hand, if a complex enforcement  
C operation is wrongfully terminated, wrongfully prevented by HS2, that would be  
extremely expensive, with consequential delays and so forth, damages may be an  
adequate remedy but, in practice, I suspect there is no reasonable prospect or no prospect  
of those damages ever being paid by those seeking the injunction.

D Then the second main point, my Lord, which is that a cross-undertaking in damages  
has been offered but it is not worth the paper it is written on in circumstances where we  
do not even know the address of these people, let alone anything about their means.

E The third point is that if a crime is being committed, which is the main thrust of the  
complaint here, the police are there or easily contactable and that is the more obvious  
and more natural route for relief, my Lord. My learned friend makes the point that he  
has often complained when I have sought injunctions against protesters for committing  
various tortious actions that they are also crimes and so why not leave it to the police is  
the point he made. The key difference is, my Lord, that in those instances I have been  
F seeking to restrain something that is also a civil wrong.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: I have not been seeking to restrain something which is solely a criminal  
G wrong.

MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: And then the final point, my Lord, is that, as I mentioned at the outset, there  
is a duty of full and frank disclosure here, and in my submission that duty has not been  
fulfilled, it has not even been mentioned.

H MR. JUSTICE SWIFT: How not fulfilled do you say?

A MR. ROSCOE: Well, we do not, for example, have details of where else they might be able to live. Plainly they have come from somewhere. It was me that had to draw attention to the obvious legal proposition that breach of a criminal statute is not without more grounds for a civil injunction.

B MR. JUSTICE SWIFT: Having a better argument is not the same as saying that the other side in failing to spot it have failed to make full and frank disclosure, assuming your argument is the better argument, of course.

C MR. ROSCOE: My Lord, not even referring to the argument at all, in my submission, is a little bit short of what might be expected. And third, there has not been any balanced explanation as to what has been going on on the protesters' side of the incident or confrontation or engagement. There is a lot of criticism of what the bailiffs have done but there is not any recognition of the locking on, the barricading and such other things as those in possession might have done, the extent of which-----

D MR. JUSTICE SWIFT: Sorry, what is meant by "locking on"?

MR. ROSCOE: My Lord, it is where a protester attaches themselves often by the arm or by some other part to an immoveable object to make it impossible or difficult for them to be removed.

E MR. JUSTICE SWIFT: Okay. Understood.

F MR. ROSCOE: My Lord, I don't labour those points much, not least because before I have had a proper opportunity to take full instructions I don't know the extent to which there are other things that might properly have been drawn to your attention, but I do just flag those big picture points. My Lord, I think that is all I wanted to say at this juncture.

MR. JUSTICE SWIFT: Thank you. Mr. Powlesland, anything in reply?

G MR. POWLESLAND: Yes, a few brief points. Firstly on that point of not full and frank disclosure for not mentioning things such as locking on, you will note at paragraph 2 of my skeleton argument I state specifically: "Mr. Ackroyd is currently locked on within the property that is the subject-matter of the injunction. I spoke to him by telephone." I do set out in as much detail as I was given by the protesters in quite difficult circumstances what the situation is and I would reject any submission that I have not provided full and frank disclosure as best as I was able to in the circumstances, given the rather difficult circumstances.

H

A Moving on to the legal issues, Mr. Roscoe states that what the claimant is asking for  
is not that an unlawful eviction should be stopped, but seeking the court's assistance to  
commit a tort, and that should be the end of the matter. There are a number of responses  
to that. Firstly, at the time the application was made the eviction was still underway and  
B I did request repeatedly from HS2 that they give an undertaking that it would be stopped  
and they did not wish to give that undertaking. I would submit, therefore, the court  
should not be too willing to entertain submissions that there is now a *fait accompli* and it  
is too late. HS2 were aware of it and they could have stopped it and therefore I submit  
C that it is a reasonable circumstance in which we could be put back into possession. Also,  
the idea that the court could not use its powers to put a trespasser back into possession is  
just not true. As has been repeatedly stated, title is relative and if another trespasser tries  
to take possession the court can and should and will put the original trespasser back into  
D possession. In the present case there is an additional reason for doing that, and that is  
what I keep saying repeatedly, is that otherwise we are encouraging a rather lawless  
environment in which a public body, a public authority instructs bailiffs to go in and  
potentially commit criminal offences in order to gain possession, and that is why,  
E although it may be unusual to put trespassers back into possession, I submit the court  
should do so in order to signal its displeasure at potentially what has been done by HS2.

MR. JUSTICE SWIFT: Doesn't your lawless environment point rather cut both ways  
though, given that the claimants are trespassers, or were trespassers?

F MR. POWLESLAND: But, my Lord, Parliament has clearly signalled that even in cases  
where there are trespassers, and section 6 makes specific mention of this, that just  
because you have a right to possession does not mean you can ignore section 6. They do  
not wish to have violence, and actually it is very interesting, I had not seen the statutory  
G history of section 6, and going back as far as Richard II the States and the courts have  
been keen to avoid a situation in which armed thugs are sent round to dispossess people  
of property, even if those people are trespassers, and you can see the very-----

MR. JUSTICE SWIFT: I don't think anyone is suggesting that the second defendants are  
armed thugs, are you?

H MR. POWLESLAND: Well it depends what you count as "armed" but they carried  
equipment in order to smash into the property.

A MR. JUSTICE SWIFT: Mr. Powlesland, I do not think you do your case any credit by dialling up the rhetoric and dialling down the accuracy.

B MR. POWLESLAND: I apologise my Lord. But the point is that for a long time the State and Parliament and the courts have been keen to avoid situations of violent  
C dispossession of land, even against trespassers, and therefore I submit that even though the courts may not -- obviously the court may be reluctant to grant this remedy to trespassers, the fact that there appears to be serious grounds for arguing that a criminal offence has been committed by the first defendants on the instructions of the second defendants the court should grant that relief in order to signal its displeasure over what has potentially happened here.

D The other matter is in relation to whether there is a civil remedy for breach of section 6, and I would submit the legal position is actually not clear. All we have saying that this is not is a 100 year old case based on a previous statutory provision. That case was before section 6 was enacted, it was before the Human Rights Act was enacted and I submit that a different result may well result in the case today. The only modern authority cited is *Meier* but you yourself noted that effectively that is obiter, and not only  
E is it obiter but Baroness Hale did not even actually come to any conclusion, she just says: well no civil wrong is done by this, there is the Criminal Law Act, and does not give a conclusion, and actually it is a very interesting point which has not been determined by the courts in the modern era as to whether that should exist and also how  
F it interacts with the Human Rights Act both for private land owners and indeed public ones, as we see here. So I submit this is a serious question to be tried as to the civil results of a breach of section 6 of the Criminal Law Act, and there is no authority, no modern authority gainsaying that.

G MR. JUSTICE SWIFT: Yes. Is there anything else you would like to say?

H MR. POWLESLAND: About the public body, what is also interesting is Mr. Roscoe draws attention to the fact that it does not count where it is exercising a private function effectively, but then interestingly a few minutes later went on at some length to state that the way in which HS2 is alleged to have obtained the land is by the Secretary of State exercising a General Vesting Declaration. I submit that the Secretary of State exercising compulsory purchase powers are a classic public function and this is not a case where



A HS2 has bought a house on the private market and wishes to take possession of that house. They have obtained the land via a clear public function and via the Secretary of State and an Act of Parliament and I submit that therefore their entire claim to possession is based on a public law function and therefore the Human Rights Act does bite in the way that they use those powers.

B On the issue of whether HS2 in fact has the rights of ownership to the garages, I did a quick Google satellite image search whilst my learned friend was taking us through the GVD and it is clear if you just type "Dews Lane, Harefield" into Google and look at the satellite image, that RMC Garages is marked specifically on the map as being opposite the small parcel of land known as 47430 on the GVD and it is not, as far as I can see, included in any of those documents as actually within any of the GVDs supplied by Mr. Roscoe. Indeed, the area that was said to be the garages, the area marked as 47431, is mentioned in the GVD as a house, and actually if you look at the Google images clearly looks like a house and is down the road and on the other side of the road from what is marked as "RMC Garages" on the Google map, and therefore I would submit that there is a serious question to be tried whether HS2 even has any right to possession over RMC Garages, and they have provided, despite their attempts, zero evidence, I submit, to show that is in fact the case, and therefore there is a serious question to be tried about whether they even have a right to possession and therefore under relativity of title I submit that my clients deserve to be put back into possession.

F Those are my submissions, my Lord.

MR. JUSTICE SWIFT: Is there anything you want to add, Mr. Roscoe, about that last point?

G MR. ROSCOE: My Lord, I have been trying to take instructions on it. I am told briefly that there is some doubt as to whether or not what is marked as "RMC Garages" on Google Maps is the correct designation on Google Maps, whether they have got the pin in the right place, as it were. I can try to take some brief further instructions, but I would make the point that it is Mr. Powlesland's application for an order that they be allowed into possession of certain land and I suggest it is possibly incumbent on Mr. Powlesland to identify which bit of land he wants the order over.

H MR. JUSTICE SWIFT: If we go back to the plan attached to Declaration 160 which you showed me earlier.

A MR. ROSCOE: Yes.

MR. JUSTICE SWIFT: And we were looking at 47431 towards the top right.

MR. ROSCOE: My Lord, yes.

B MR. JUSTICE SWIFT: Have you got that? There is a track in front of 47431, and across the road or across the track there are some what look like structures identified, Dews Farm Cottages, and then “garage”. Do you see that?

MR. ROSCOE: My Lord, yes.

MR. JUSTICE SWIFT: Is that the garage?

C MR. ROSCOE: I don’t know. I am instructed not, that we think it is that bit of land.

MR. JUSTICE SWIFT: I appreciate you are dealing with this on the hoof so I do understand the circumstances and I certainly understand the point you have just made about whose application it is. Would you like a moment to take instructions to see if it is possible to clarify this at this stage?

D MR. ROSCOE: My Lord, yes. Before I take that kind opportunity, I am just wondering whether or not any light might be shed on this -- no, I don’t think it is. If I may just mute my microphone and see if I can take brief instructions.

E MR. JUSTICE SWIFT: Mr. Roscoe, I can either give you the video equivalent of turning your back, or would you like a few minutes to do it, in which case we could just temporarily adjourn the hearing. Which would you prefer?

MR. ROSCOE: Possibly the latter may be more sensible, my Lord.

F MR. JUSTICE SWIFT: Rather than end the call, what I will do is mute and I will turn off my video as well to allow you, Mr. Roscoe, the opportunity to take instructions and perhaps you could just send an email to my clerk when you are ready to continue and also to Mr. Powlesland as well.

G MR. POWLESLAND: I will mute and turn off my video as well so that we are all off the call.

MR. JUSTICE SWIFT: Is that all right, Mr. Roscoe?

MR. ROSCOE: Not at all, I am very grateful, my Lord.

H MR. JUSTICE SWIFT: We will do that now then.

**(The hearing was adjourned for a short time)**

THE CLERK: Recording has resumed

A MR. JUSTICE SWIFT: Mr. Roscoe, is there anything further to report?

MR. ROSCOE: My Lord, yes. We are confident we have identified the right building and it is that pink area. If your Lordship were to look on the satellite images on Google your Lordship will see that whilst there are north of the road, as your Lordship identified, a number of what appear to be like commercial buildings, including garages---

B MR. JUSTICE SWIFT: Yes.

MR. ROSCOE: --- the premises to the south of the road is also such a building and it appears to be part of the same complex or business, all a garages complex. It is that one they are in.

C MR. JUSTICE SWIFT: Right.

MR. ROSCOE: It also appears that the pin of RMC Garages or RCM Garages may be the registered offices of this gentleman's business, but the particular building we are on is the one in that pink band.

D MR. JUSTICE SWIFT: Thank you very much. I will just give a ruling on the application.

**(For judgment please see separate transcript)**

MR. JUSTICE SWIFT: Now, Mr. Powlesland, Mr. Roscoe, is there anything arising from that or anything further that you need me to deal with this afternoon?

E MR. POWLESLAND: There is one matter which is that you dismissed my submissions on the Human Rights Act on the basis of justification, which I presume is a reference to Article 8 "necessary in a democratic society in the interests of national security and public safety or the economic wellbeing of the country", etc.

F MR. JUSTICE SWIFT: Article 8(2) Mr. Powlesland, yes.

MR. POWLESLAND: Yes. That paragraph has two elements to it: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law, and..." so "in accordance with the law" is in addition to what can be termed the justification point, and that was a part of my submissions in relation to-----

G MR. JUSTICE SWIFT: Just to be clear "in accordance with the law" includes in accordance with provisions in common law, and on that basis it seems to me that that would be a matter relevant to the substance of any Article 8(2) argument.

H

A MR. POWLESLAND: So is your finding that HS2's actions yesterday were in accordance with the law?

MR. JUSTICE SWIFT: My conclusion, Mr. Powlesland, and this is not an opportunity for debate, if you wish to debate my judgment you know that there are other courts you can go to---

B MR. POWLESLAND: I understand that but I am trying to seek clarity, sorry.

MR. JUSTICE SWIFT: --- my conclusion is simply that at trial it is unlikely that your clients would succeed in convincing a court that the actions taken yesterday amounted to a breach of their rights under Article 8 of the Human Rights Act.

C MR. ROSCOE: My Lord, there is from my perspective the question of costs. Those instructing me have prepared this morning a statement of costs. I was wondering if I might email that through via the same channel I did a moment ago.

MR. JUSTICE SWIFT: And to Mr. Powlesland as well.

D MR. ROSCOE: Yes, of course, and to Mr. Powlesland.

MR. JUSTICE SWIFT: Yes. **(Pause)**

MR. ROSCOE: I have just sent that, my Lord. While it filters through, I would say briefly my submission on the principle is that this has been an application which has been brought and which has failed on both limbs, in other words a serious issue and also balance of convenience, and in those circumstances the appropriate order is one that the claimants pay the first defendant's costs of the hearing, summarily assessed on the basis of the statement I have sent through.

E

F MR. JUSTICE SWIFT: Right, obviously we have yet to receive the schedule. What is the headline figure in terms of the amount claimed?

MR. ROSCOE: The total figure, my Lord, is £4,385.

G THE CLERK: Mr. Roscoe, I have received the email and I have forwarded it to his Lordship.

MR. ROSCOE: Thank you.

MR. JUSTICE SWIFT: I will just wait for that to come.

MR. POWLESLAND: Mine is saying it is corrupt and cannot be opened. I don't know if that is at my end only. **(Pause)**

H MR. JUSTICE SWIFT: I am yet to receive anything, so the email is wandering its way through the ether.



A THE CLERK: The Excel document sent to me I can open up without any problems. I don't know about anyone else though. Thank you.

MR. POWLESLAND: I have just been able to open it. **(Pause)**

MR. JUSTICE SWIFT: It's not with me yet. I am sure it will be shortly. **(Pause)** Apologies for this.

B MR. ROSCOE: My Lord, possibly then to move on to the next but related order of business from this.

MR. JUSTICE SWIFT: Yes.

C MR. ROSCOE: Mr. Powlesland is acting on a direct access basis I understand, but the only address for the claimants that has been provided in the paperwork is the garage which they have now been evicted from.

MR. JUSTICE SWIFT: Yes.

D MR. ROSCOE: In those circumstances, I submit it would be appropriate that the claimants should also be directed to provide an address for service in connection with these proceedings that they have commenced.

MR. JUSTICE SWIFT: Yes. I have got the spreadsheet. Mr. Powlesland, you have been able to open that now have you?

E MR. POWLESLAND: Yes.

MR. JUSTICE SWIFT: Are there any observations you wish to make on that schedule, Mr. Powlesland?

MR. POWLESLAND: I wish to address you on the principle first, my Lord, if possible.

F MR. JUSTICE SWIFT: Yes.

G MR. POWLESLAND: I submit that no order for costs should be given today on the basis of the behaviour of HS2 in this matter. Firstly, they have chosen a course of action which was unnecessary. They could and should have sought a possession order in this case which could have been dealt with summarily, as Mr. Roscoe repeatedly pointed out, by the courts and in which their title to the land could have been properly assessed by the courts. It is not the case that the claimants in this matter merely began injunction proceedings without questioning HS2 as to the nature of what they were doing yesterday when bailiffs began to batter down the doors and the walls of the house in which they were living. They repeatedly asked the bailiffs what the legal basis of them entering the  
H

A premises were and were told, and I think there is a video of this, that it was on the basis  
of Aylesbury's Laws, which seems to me something to do with Halsbury's Laws, as  
shown by the leaflet. They were also told that section 6 does not apply because the  
claimants were not paying rent. Now Halsbury's Laws does not give a basis for  
B someone to take possession of property, and also their interpretation of section 6 given is  
frankly wrong. What HS2 did not do and easily could have done, given they had not  
previously sought a possession order, would have been to say: well we own this land,  
here is the GVD, here is the map and here is our claim and we can eject you under  
C trespass. The only time I actually saw the GVD that showed HS2 as it were in  
possession of this land or had a legal title to it, other than the say-so of HS2, was during  
the hearing. There is, I submit, no-----

MR. JUSTICE SWIFT: Which DVD are we talking about?

MR. POWLESLAND: GVD, the General Vesting Declaration.

D MR. JUSTICE SWIFT: Sorry, cloth ears on my part!

MR. POWLESLAND: No, no; the only time that I saw the GVD was in this hearing. Up  
until this point there was no evidence presented to either the claimants or myself that  
HS2 actually owned the land. All we had was some bailiffs asserting that and getting a  
E number of legal things incorrect on video, and I submit in the circumstances HS2 should  
not get their costs where only during a hearing following what may have been an  
eviction that was in breach of criminal law they have actually revealed their title, and in  
those circumstances I submit no orders for costs should be made.

F MR. JUSTICE SWIFT: And if I am against you on that do you have anything to say about  
the amount sought?

MR. POWLESLAND: This seems very high. I do not entirely know what attendances  
G needed to be done in relation to HS2 and the solicitors that took three-and-a-half hours  
yesterday. I am also slightly confused as to attendance on opponent. Presumably that is  
an email sent by me saying: will you agree to represent HS2? Interestingly they have  
then charged £105 for that. Also nearly three hours on attendances on counsel and the  
court, I just cannot see where that has come because I have not had anywhere similar  
H amounts of attendances. And attendance at the hearing seems very unnecessary when in  
the circumstances where learned counsel who is able to deal with it can do so. Finally, I

A would say that the fee of my learned friend seems high and that for a telephone hearing £750 would be reasonable.

MR. JUSTICE SWIFT: Mr. Powlesland, do you have any point to make in response to what Mr. Roscoe says about the claimants being required to-----

B MR. POWLESLAND: I don't know what he means by "required". I think the court should be very-----

MR. JUSTICE SWIFT: I think what he means is I should make an order requiring them to tell the defendant what their addresses are.

C MR. POWLESLAND: But if they do not have an address the court should be very reluctant to require someone-----

MR. JUSTICE SWIFT: Well we don't know if they have an address or not, do we.

MR. POWLESLAND: In that case I would ask that it not be put as a requirement in terms of saying you must provide an address, but if you have an address to provide it to us.

D MR. JUSTICE SWIFT: An answer to an order requiring provision of an address to say: "I am of no fixed abode" would be a satisfactory answer, assuming it to be true.

MR. POWLESLAND: In which case I do not have any objections as long as that is an acceptable answer to make, because I think that may well be the answer.

E MR. JUSTICE SWIFT: Well if it is true.

MR. POWLESLAND: Indeed.

MR. JUSTICE SWIFT: And perhaps if it were the case it would be helpful if the claimants could identify for example where they had lived before they started their protest.

F Anyway, I will leave that to their good sense. Mr. Roscoe, just one question in relation to the costs. The GVD documents---

MR. ROSCOE: My Lord, yes.

MR. JUSTICE SWIFT: --- are they public documents?

G MR. ROSCOE: I have a line of communication with Ms Jenkins. Let me just ask the question.

MR. JUSTICE SWIFT: Yes.

H MR. ROSCOE: I have had a message saying "I don't know" which I think was pre-empting to Ms Jenkins the question that I have just sent her a message to ask, so I think the answer is we don't know.

A MR. JUSTICE SWIFT: We don't know. Okay. Two things then. Costs: the application for  
interim relief has failed. The usual order is that costs should follow the event in those  
circumstances. I can see no reason to depart from that principle in this case. So far as  
B the assessment of costs, the amount claimed is £4,385.83. I have to take into account not  
simply whether those amounts were incurred, and nothing I say should be taken as a  
C suggestion that those amounts have not been incurred but whether it be reasonable to  
require the claimants to pay those amounts, I summarily assess costs in the amount of  
£3,000. I will make an order requiring the claimants by 4 p.m. this Friday to notify the  
defendants of their current address and also to inform the defendants of any address  
either lived at before commencing their protest at the garage.

Is there anything else that either of you would like me to deal with?

MR. ROSCOE: No, my Lord.

MR. POWLESLAND: No my Lord. Thank you.

D MR. JUSTICE SWIFT: Could I ask you please to agree the terms of the draft order and send  
that to my clerk. I am sure you will be able to agree the terms, but if there are matters on  
which you are unable to agree if you could simply notify my clerk of the points and the  
alternative versions then I will decide the final form of the order in those circumstances.

E Can I thank you both very much for your assistance this morning and thank you also  
for preparing documents for the case, it is very much appreciated and made the hearing  
much easier to conduct. Thank you both for that.

F I will hang up the call now. You had better stay on for a few moments just in case  
my clerk has any further instructions she needs to give to you. Thank you very much.  
Good afternoon.

MR. ROSCOE: Thank you. Good afternoon.

G MR. POWLESLAND: Thank you.

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**Marten Walsh Cherer hereby certifies that the above is an accurate and complete  
record of the proceedings or part thereof.**



**A**

**B**

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# Harvil Road, Dews Lane and Denham Country Park eviction operations

## protest camp conditions

Prepared by: **David Asker HCEO**

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Document title	Harvil Road, Dews Lane and Denham Country Park eviction operations - campsite scenes		
Owner of Document	High Court Enforcement Group Ltd (inc. National Eviction Team)		
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Author of document	<b>David Asker (HCEO)</b>		
Authorised date	<b>26<sup>th</sup> June 2020</b>		
Authorisation information	Document prepared for Glenn Payton, HS2 Limited		
Document review date	26/06/20	GP/AM	

Following the entry of the NET enforcement officers at first light, a group of protesters prepare to depart one of the resistive structures which they had erected...



Their communal kitchen area...





What we found, underground: the trespassers had taken over the HOAC childrens' adventure training facilities, equipping it with several steel tube lock on devices...



Fortifying and effectively destroying a complex caving simulation built for HOAC clients...



They had also dug their own deep tunnel system, also extensively furnished with steel lock-on devices...

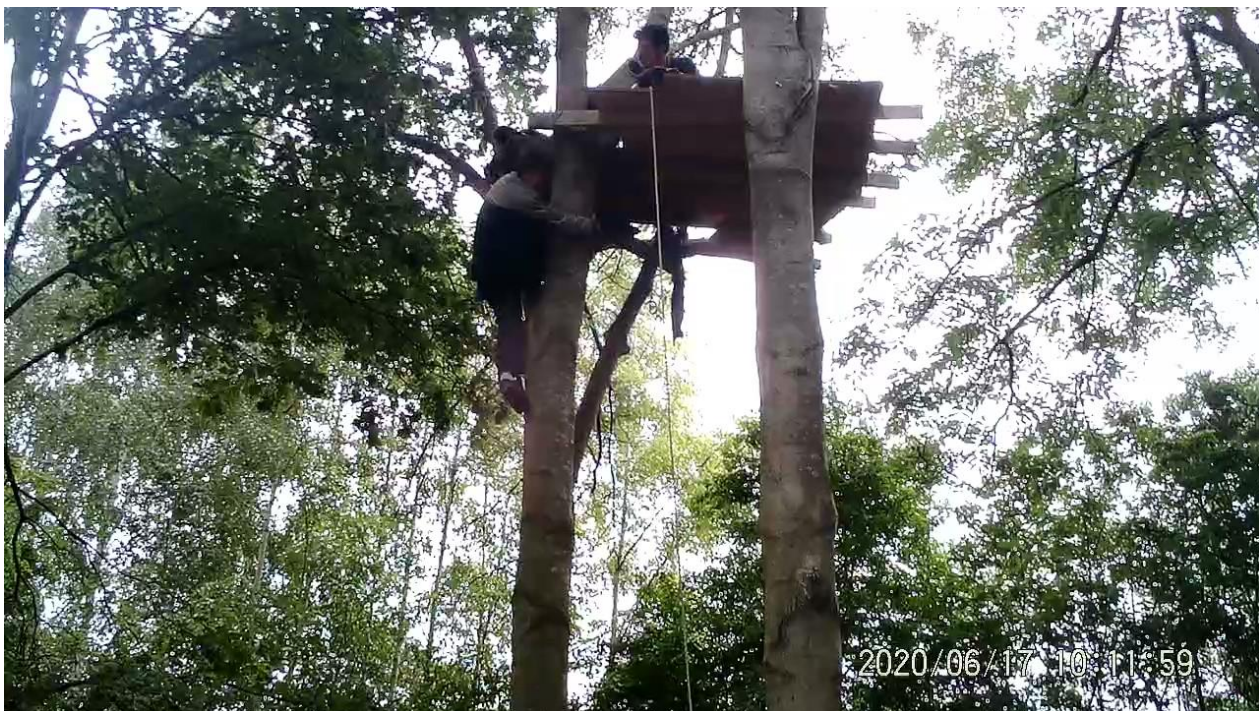




And had also crawled into the sewer system, again using lock-on devices (a Thames Water pumping station lies nearby)....



And up above, locked on in the tree platforms they had built...





With cargo nets, banners and lock-ons to render removal as difficult as possible (but ineffective if they don't have time to first climb into the tree!)...



The entire site, on the ground, under it and at height was extensively furnished with many concrete and steel lock-on devices, designed to be joined in daisy-chains and apparently professionally built; but they were mostly unable to get to them in time when we arrived...





Removal of trespassers by the NET climbing team at height....

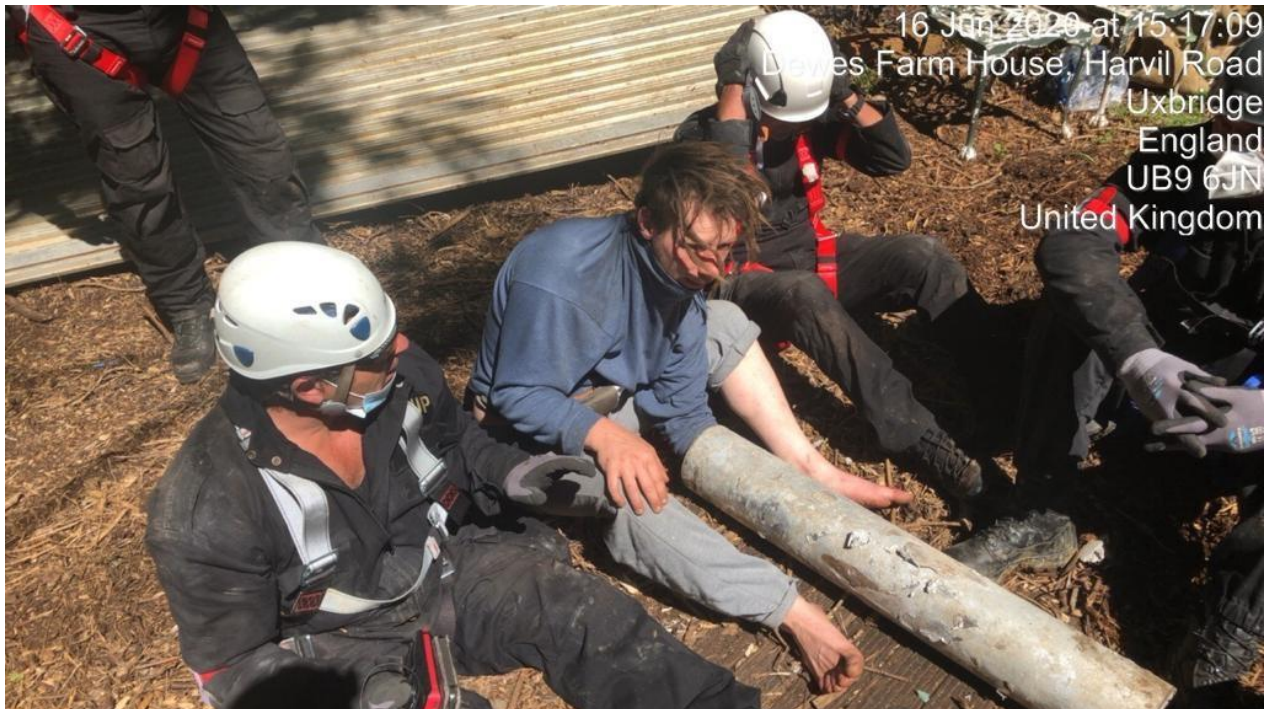


And by the NET confined space team from the cave simulation system...





From the deep tunnels...



And drains (this young man ended up in hospital with sepsis)...





And of course from the ad-hoc camp site...





**Transcript of Video:**  
<https://www.facebook.com/bbcnews/videos/uk-protesters-try-to-save-threatened-forests/582098786031995/>

**Duration of Video: 05:02.8**

In attendance:

Initials	Name	
M1	Male 1	
F1	Female 1	
TW	Talia Woodin	Newsnight Presenter
LM	Larch Maxey	
PF	Paul Faulkner	CEO, Greater Birmingham Chamber of Commerce
FP	Frank Partridge	Chair, Denham Against HS2

Initials	Commentary
M1	I grew up in the local area.
TW	Yeah.
M1	This is personal. You know, you'll see yourself if you come down, the destruction that they are doing and we're here to try and stop it.
F1	Yeah. So at the moment we're technically like lawfully squatting this area, yeah.
TW	And the people up there?
F1	Yeah. That's Matt [laughs].
TW	Hello.
F1	[Laughs].
TW	Hi Matt.  Inspired by Extinction Rebellion, this is HS2 Rebellion. In a wood in Buckinghamshire and at other sites along the HS2 route, activists have taken to the trees to guard against what they see as an ecological disaster.
F1	Yeah, and we've got a really high treehouse up there.
TW	Oh yeah.
F1	And then in this middle bit, and I mean that treehouse can sleep like seven or eight people. And, then in this middle bit there's a few hammocks strung up there, and we've got a few little platforms dotted about.
TW	An HS2 access road is being built across the River Colne here. Construction's been halted by protesters who sleep in the trees in shifts.
F1	The more people we have up in the trees the longer it will take them to get us out. So, the longer it will take them to evict us the more money it will cost them.
TW	Here, they say they're protecting trees and wildlife. According to the Woodland Trust, along its route HS2 will also destroy more than 100 ancient woodlands which have been around for more than four centuries. The company says its 62 sites and most of the trees will remain untouched.
TW	It would make sense if you were up there protesting against a road perhaps but this is rail. It's supposed to be seven times less polluting than road.
LM	So I thought the same thing, I thought it's a railway, it's public transport, it's a good thing. When you scratch the surface it just unravels. Thousands of pounds of your money will be spent on this scheme. Every single person in Britain, thousands of pounds of our money. How many more woodlands? How

	many more homes? How many more communities get destroyed before that difficult decision is made to say, let's draw a line under this.
Advert	Britain's new high speed railway. High Speed 2 is a game changer for our rail network.
TW	After a decade of controversy and despite the estimated £100 billion price tag, for many the argument is won. The Government gave the project the green light after a review and planning permission in April.
PF	Here in Birmingham we see, you know, the jobs that this is gonna create. The economic impact that it's gonna have is estimated round about £14 billion a year to our regional economy. You know, hundreds of thousands of jobs and just over 100,000 in Birmingham region alone. So, ever more across the whole country, you know. It's adding much needed capacity to our transport network, obviously, the rail network in particular but it's gonna free up more capacity there which will help us to take cars and lorries off the roads which can only be a good thing. So, yeah, you know, it's you know, we need to get the railway built.
TW	And just a mile or two from the tree camp that's already happening. A tunnel from here will take the line under the Chilterns, nearby the UK's largest viaduct is planned.
FP	This is mostly lake plans. We call it our Lake District.
TW	After ten years running Denham's Stop HS2 campaign, Frank Partridge still has hopes of a reversal and for him the pandemic adds another argument.
FP	Zoom, video conferencing, people realising that they can do a lot of their work from home, much less commuting, much less traffic between London and Birmingham and improved video communications surely in the next decade, is gonna change how we work and how we live.
TW	At the camp, they plan to stay for as long as it takes. And though all was quiet when we visited, HS2 has been taking action to remove protesters along the route. In some cases sending climbing professionals up into the trees.
LM	We have already been evicted from this site once and we've come back stronger and better than ever and that's what we keep doing. Every time HS2 try and break the law, try and break the rules, try and break our spirits, we come back stronger and...
TW	But isn't it you breaking the rules, breaking the law? The law is on their side now isn't it?
LM	...I'm taking non-violent principled civil disobedience along with hundreds and increasingly thousands of others.
F1	Most nights we're up until like five or six like either building or prepping for a possible eviction so, don't really get much sleep. But, it is, I mean it's incredible. The best thing is if you've been up all night like working and you get up into the tree and you have like the sun coming up and you have the morning chorus with all the birds and you're just like in, in the canopy, it's incredible. There's nothing like it really.
F1	Will the stark economic reality of COVID trump the environment over the next months and years? Not in a climate emergency say these activists. And with Extinction Rebellion in September, they plan to get their agenda back into the public eye.