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# Dealing Effectively with Trespassers: Recent Cases

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Trespassers can cause nuisance, damage to property, disruption to business and expense. Dealing quickly and effectively with trespassers can therefore be of vital importance.

Gwendoline Davies and Twm Russen, Commercial Dispute Resolution,  
Walker Morris LLP

**M**any landowners have experienced the nuisance, damage to property, disruption to business and expense of dealing with trespassers. Whether it be travellers setting up encampments or protestors blockading sites or disrupting trading, trespass can cause direct, financial loss for landowners, reputational damage, and it can often have wider social impact for the general public or lawful occupiers who may get caught in the cross-fire.

Dealing quickly and effectively with trespassers (or even acting before the trespass has occurred) can therefore be of vital importance. This is not always straightforward where the identity of any trespassers is unknown (so that they can't be named in legal proceedings), and/or where, following an eviction, trespassers simply return or relocate to another of the landowner's sites, very shortly afterwards.

### What is the solution?

Fortunately for landowners, a flurry of recent case law in this area offers helpful guidance for those seeking an injunction to remedy the situation, or prevent it from arising in the first place.

An injunction has real "teeth" because it contains a penal notice. That means that if an affected person breaches the injunction, he or she is in contempt of court and can be imprisoned. The courts do not, however, grant injunctions without first undertaking a thorough assessment as to whether they are an appropriate remedy.

Landowners, businesses and their advisers should therefore note all of the following legal and practical lessons to come out of recent trespass case law.

### Key lessons from recent trespass case law

**Boyd v Ineos Upstream Ltd [2019] EWCA Civ 151<sup>1</sup>**  
There must be a sufficiently real and imminent risk of a wrong being committed to justify quia timet (that is, anticipatory/pre-emptive) injunctive relief.

For an injunction to be granted against "persons unknown", it must be impossible for the claimant to name the person[s] likely to commit the wrong; and it must be possible to give effective notice of the injunction.

The terms of the injunction must correspond to the threatened wrong; they must not be so wide as to prohibit lawful conduct; and they must be clear and precise.

The injunction should have clear geographical and temporal limits.

### Norfolk County Council v Johnstone & Ors [2020] 1 WLUK 36

Where other forms of enforcement action against trespass<sup>2</sup> have failed and the harm caused is not compensable in damages, an injunction can be awarded.

The **Boyd v Ineos** principles apply on the granting of interim injunctions as well as final injunctions.

So far as the temporal limit of an interim injunction is concerned, that will be a question of fact in each case. An injunction made for too long-a-time could be subject to an application to vary. (In the Johnstone case, a three month interim injunction was ordered on the basis that it would give the claimant and the court the





opportunity to assess whether injunctive relief was proving successful, and it would give both parties time to prepare for the final injunction hearing<sup>3</sup>.)

### Canada Goose UK Retail v Persons Unknown [2020] EWCA Civ 303

Amid the pressure and the practicalities of injunction litigation, parties must not underestimate the importance of getting the legalities and the procedural aspects absolutely right<sup>4</sup>.

### Cuadrilla Bowland Ltd v Persons Unknown [2020] All ER (D) 105

So far as the **Boyd v Ineos** requirement for clarity and precision is concerned, this is particularly important where an injunction is targeted at persons unknown or at those who do not have legal representation.

If there is any reasonable doubt as to whether a person's conduct is covered by the injunction, the injunction may be unenforceable and may not be relied upon to establish a finding of contempt of court/imprisonment in the event of breach.

An injunction term may fail the 'clear and precise' test if it is ambiguous, vague or drafted in such opaque, convoluted or technical language that it is not easily understood by its intended recipient.

Context will also be key to determining the clarity and precision of an injunction term ("words which are clear enough in one factual situation may be unclear in another").

### Comment

If you would like any further advice or assistance in dealing with trespassers, please do not hesitate to contact Gwendoline or Twm, who will be very happy to help.

### Reference

- 1 <https://www.walkermorris.co.uk/publications/fracking-protestors-and-injunctions-against-persons-unknown-court-of-appeal-offers-guidance-amid-controversial-context/>
- 2 such as orders for possession or local authority notices under sections 77 and 78 of the Criminal Justice and Public Order Act 1994, for example
- 3 The question of the temporal limit of the injunctions granted in *Boyd v Ineos* was not addressed in the Court of Appeal's judgment; and it remains to be seen what temporal limit will ultimately be granted in the *Johnstone* case. Further guidance from the courts on temporal limits is likely to be 'one to watch'
- 4 <https://www.walkermorris.co.uk/publications/new-court-of-appeal-guidance-on-injunctions-against-persons-unknown/>



#### Gwendoline Davies

Partner, (FCI/Arb) Head of Commercial Dispute Resolution  
Walker Morris LLP

<https://www.walkermorris.co.uk>

*Gwendoline Davies is a Partner, and head of the Commercial Dispute Resolution Group at Walker Morris (<https://www.walkermorris.co.uk>), and joined from City firm, Herbert Smith Freehills.*

*Ranked as a leading individual and in the top tier for commercial dispute work for a number of years, Gwendoline is a highly respected litigator and has been involved in several reported cases. The Chambers Guide to the Legal Profession describes Gwendoline as "first-class" and "a star litigator who is very commercial and responds very quickly no matter what time or time zone."*

*Her clients come from multiple industries and business sectors and include major corporates and leading financial institutions. She has more than 30 years of experience of representing clients in their most complex and important disputes. Her practice includes company and commercial disputes, trading disputes, regulatory matters, internal investigations and domestic and international arbitration.*

*She is an accredited mediator with the Centre for Dispute Resolution, a Fellow of the Chartered Institute of Arbitrators and a member of the International Bar Association.*

*Gwendoline is ranked as a leading individual in her field by independent guides to the profession: Chambers & Partners, Legal 500 and Best Lawyers. In 2018 she received the Hall of Fame accolade by the Legal 500 which highlights individuals who have received constant praise by their clients and have been recognized by The Legal 500 as one of the elite leading lawyers for six consecutive years or more.*

*Gwendoline is also endorsed by 'The Best Lawyers in the United Kingdom' directory for litigation.*



#### Twm Russen

Associate, Commercial Dispute Resolution  
Walker Morris LLP

<https://www.walkermorris.co.uk>

*Twm Russen is an Associate in the Commercial Dispute Resolution department of Walker Morris LLP.*