

## **Civil Procedure for Possession Proceedings where land is unlawfully occupied**

This procedure relates to possession proceedings where land is unlawfully occupied.

All initial reports of encampments should be referred to the Gypsy Liaison Officer (GLO), Rural Services Group, CCBS. The GLO will issue instructions to Hampshire Legal Services (HLS).

- 1 HLS will receive instructions from the GLO or Assistant GLO or other relevant Instructing Officer detailing: where trespass is; who is in occupation of the land; what steps have been taken to date to remove the trespassers; the urgency of taking legal actions, i.e. influenced by Press interest, local residents pressing for action, Councillor involvement etc.
- 2 HLS with the GLO will establish who owns the land. If it is not Hampshire County Council owned or if it is but is privately leased then the onus for any action will be on the owner/tenant of the site.
- 3 The GLO will carry out welfare checks on those encamped and prepare a report. The decision whether to tolerate or not will be decided on the basis of this report, which should set out all the human rights issues. It has been agreed that the Head of Hampshire Legal Services, or one of his delegates, will make the decision to tolerate or not. If Court action is required they will indicate this on the report and sign the report, where indicated.
- 4 The GLO will arrange for Head of Hampshire Legal Service to make the decision after initial consultation with the Team Leader - Highway Litigation (when consideration will be given as to the appropriate forum for the court action i.e. Civil or Magistrates' Court, and the timescale required). It is important to ensure that this decision is also made in consideration of the County Council's Policy regarding the Management of Unauthorised Encampments.
- 5 HLS will conduct a Highways Status search/Rights of Way search/obtain Deeds and ensure there is adequate evidence of title before proceeding. In the event that there is no documentary evidence of title, a Witness Statement will be prepared for an officer who is able to confirm that the land in question has been maintained as public highway for a period of years.
- 6 HLS will agree with the GLO the area of land for which possession is being claimed, with reference to a plan (that plan to be later attached to the Particulars of Claim).
- 7 HLS will ensure that the GLO has authorisation from the Head of Legal Services to take Possession Proceedings. A Witness Statement will then be prepared from the report, dealing with the Policy and authorisation to take proceedings.

- 8 HLS will arrange for GLO to serve Notice to Quit. That Notice is to expire seven days from service of the same; unless there is a need for expediency, in which case a Notice to Quit may not be necessary. It should be noted that there is no legal requirement to serve a Notice to Quit, and there may be circumstances where it is not appropriate to serve a Notice to Quit. Similarly, the GLO may advise that a longer period is required in the Notice to Quit as a result of circumstances at the encampment.
- 9 HLS will prepare the Claim Form and Particulars of Claim.  
[http://www.hmcourts-service.gov.uk/courtfinder/forms/n5\\_0805.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/n5_0805.pdf)  
[http://www.hmcourts-service.gov.uk/courtfinder/forms/n119\\_0805.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/n119_0805.pdf). The Claim Form is to make reference to the land being claimed, as shown “as edged red (etc) on the plan attached to the Particulars of Claim”. The Claim Form should include the Court Fee (currently £175), and solicitors’ costs claimed on issue of the claim. CPR 45.1(2)(c) allows for commencement costs in Possession Claims (currently £77). In the Particulars of Claim, a pleading for costs should be made.
- 10 HLS will draft the Witness Statement for the GLO. To include exhibits as necessary, eg, exhibiting the Notice to Quit, and a plan of the area of which possession is being claimed. The GLO producing the Witness Statement must attend Court to give evidence.
- 11 The Court paperwork should be check by a Legal Officer in the Highways Litigation Team before it is sent to the court for issue.
- 12 Upon the file being returned by the Legal Officer, Highways Litigation Team, obtain dates to avoid for the listing of the hearing from the GLO, and members of the Highways Litigation Team.
- 13 Issue the Possession Claim in the Court nearest to the land of which possession is being claimed. Those documents that need to be issued are: Claim Form; Particulars of Claim; Witness Statement of GLO, together with exhibits; Witness Statement of Head of Legal Services or his delegate, together with exhibits. Provide the Court with dates to avoid for the listing of the claim. If an urgent hearing is required, then a telephone call should be made to the Listing Officer prior to sending the papers and/or the day after sending.
- 14 HLS will provide sufficient copies of the Court papers to allow for service upon all the identified occupants of the site and ‘persons unknown’.
- 15 On receipt of the Notice of Hearing, HLS, will contact the GLO in order to ascertain whether they are willing and able to serve the proceedings themselves. If the GLO is able to serve the proceedings, they should visit the occupied land and personally serve the Court papers upon as many of the Defendants identified on the Court Claim Form as is possible. This service will be carried out in accordance with the requirements for service under Part 55 of the CPR.  
[http://www.dca.gov.uk/civil/procrules\\_fin/contents/parts/part55.htm#rule55\\_6](http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part55.htm#rule55_6)

The GLO will leave and position further copies of the papers at the occupied site so as to fulfil the requirements for service upon 'persons unknown' under the provisions of Part 55 of the CPR. Those papers are to be addressed to "The Occupiers".

- 16 Having effected service of the Court papers, the GLO will complete a Certificate of Service provided by HLS in the format required by the Court to confirm the details of how the papers have been served. The Certificate of Service will then be returned to HLS prior to the hearing.
- 17 In the event that the GLO is unable to carry out service of the proceedings, HLS will contact an appropriate Process Server (TPS) with a request that the Court papers be served upon the occupants of the affected land. HLS will specify the date and time by which the papers will need to be served to comply with the requirements for service under Part 55 of the Civil Procedure Rules (CPR).

(Should the TPS be unable to be able to carry out the service of the papers by the date and time specified, they must advise HLS immediately so that alternative arrangements can be made.)

- 18 A representative of TPS will attend at the offices of the HCC Legal Practice at The Castle, Winchester and will collect the papers for service.
- 19 A representative of TPS will visit the occupied land and will personally serve the Court papers upon as many of the Defendants identified on the Court Claim Form as is possible. This service will be carried out in accordance with the requirements for service under Part 55 of the CPR.

Further, or in the alternative, TPS will leave and position further copies of the papers at the occupied site so as to fulfil the requirements for service upon 'persons unknown' under the provisions of Part 55 of the CPR.

- 20 Having effected service of the Court papers, the representative of TPS will complete a Certificate of Service in the format required by the Court to confirm the details of how the papers have been served.

- 21 TPS will arrange for the Certificate of Service (and a copy of the Court papers) to be brought back to the offices of HLS prior to the day of the hearing. A representative of TPS will then hand the Completed Certificate of Service to the HLS and will report any relevant information relating to the situation at the occupied site.
- 22 HLS will draft Court Order. Two Orders should be drafted. Both orders should read “possession forthwith (etc)” and leave blanks for the attendance of the Defendants. One order should also include an order for costs, so “the Defendant/s do pay the Claimant’s costs, assessed at £? (currently £227) within 28 days”. The other will omit reference to the costs being awarded.
- 23 A representative of HLS will attend court for the Court Hearing along with the GLO who may be required to give evidence. A forthwith Order for possession shall be sought.
- 24 Should the possession be undertaken on behalf of a client other than the Gypsy Liaison Office, all references to the GLO above should be replaced by references to an appropriate representative of the client.
- 25 Following a Possession Order being made by the relevant County Court, the HLS representative shall obtain all necessary copies of the sealed Order from the Court. Arrangements will then be made to ensure that the trespassers are served with the Order for Possession (either by the GLO or TPS).
- 26 At the date of possession as ordered by the Court, arrangements will be made to enforce the order should the trespassers not have vacated the land. This will involve further court fee and instructions to the County Court Bailiff.

**NOTICE TO OCCUPIERS**

**Open Space adjacent to**

I HEREBY GIVE YOU NOTICE that you are occupying the above land illegally without permission, licence or consent of Hampshire County Council.

I have to inform you that unless the land is vacated by you, your vehicles, caravans, animals and other property by appropriate legal action will be taken to secure and enforce your removal.

Should this enforcement action be necessary you will be held responsible for all costs of your removal and transportation and Hampshire County Council make take proceedings against you for the recovery of these costs.

Hampshire County Council will be entitled to take such action because you have failed to respond to a request to leave the land on which you are currently trespassing.

Dated

Kevin Gardner LLB, Solicitor  
Head of Legal Services  
Hampshire County Council  
The Castle  
Winchester  
Hampshire SO23 8UJ  
Telephone: 01962 847377

### **Magistrates Court Procedure for Possession where land is unlawfully occupied by travellers**

This procedure relates to possession proceedings where land is unlawfully occupied.

All initial reports of encampments should be referred to the Gypsy Liaison Officer (GLO), Rural Services Group, Culture, Communities and Business Services (CCBS). The GLO will issue instructions to Hampshire Legal Services (HLS).

- 1 HLS will receive instructions from the GLO or Assistant GLO or other relevant Instructing Officer detailing: where trespass is; who is in occupation of the land; what steps have been taken to date to remove the trespassers; the urgency of taking legal actions, i.e. influenced by Press interest, local residents pressing for action, Councillor involvement etc.
- 2 HLS with the GLO will establish who owns the land. If it is not Hampshire County Council owned or if it is but is privately leased then the onus for any action will be on the owner/tenant of the site.
- 3 The GLO will carry out welfare checks on those encamped and prepare a report. The decision whether to tolerate or not will be decided on the basis of this report, which should set out all the human rights issues. It has been agreed that the Head of Hampshire Legal Services, or one of his delegates, will make the decision to tolerate or not. If Court action is required they will indicate this on the report and sign the report, where indicated.
- 4 The GLO will arrange for Head of Hampshire Legal Service to make the decision after initial consultation with the Team Leader - Highway Litigation (when consideration will be given as to the appropriate forum for the court action i.e. Civil or Magistrates' Court, and the timescale required). It is important to ensure that this decision is also made in consideration of the County Council's Policy regarding the Management of Unauthorised Encampments.

- 5 HLS will conduct a Highways Status search/Rights of Way search/obtain Deeds and ensure there is adequate evidence of title before proceeding. In the event that there is no documentary evidence of title, a Witness Statement will be prepared for an officer who is able to confirm that the land in question has been maintained as public highway for a period of years.
- 6 HLS will agree with the GLO the area of land for which possession is being claimed, with reference to a plan (that plan to be used in the Court Bundle).
- 7 HLS will ensure that the GLO has authorisation from the Head of Legal Services to take Possession Proceedings.
- 8 If the decision has been made **not** to tolerate the incursion and to proceed using Criminal Procedure a Direction under the Criminal Justice and Public Order Act 1994 is required to be served on the travellers.
- 9 HLS will arrange for GLO to serve the Direction. The deadline for them to quit the site should be decided by the GLO in light of the Welfare Report. The Direction is served either by GLO or where that is not possible a Process Server. *NB: It is advisable to get a Council Officer to accompany this Process Server so that they can attend Court to give evidence of service.* The legislation enables us to put the Direction up on site so usually we do a mixture of personal service and displaying on site.
- 10 HLS will arrange for whoever serves the Direction to complete and sign a Certificate of Service with a copy of the Direction attached to the Certificate in the format required by the Court to confirm that the papers have been served.
- 11 If the Direction is not complied with HLS will draft the papers required by the Court as it will be necessary to obtain an Order for their eviction from the Court. HLS will draft the Summons, Complaint and Order.
- 12 HLS will obtain dates to avoid for the listing of the hearing from the GLO and members of the Highway Litigation Team and get a Court date for the hearing. Bear in mind that a summons must be served on the travellers giving them at least 24 hours notice of the Court date. (Make sure your witness (see 9) can attend Court on the day). You may feel that it is appropriate to obtain these dates/times before the deadline for the incursion to quit has passed (you can **and must** always cancel if not needed).
- 13 Once the papers have been prepared by HLS the GLO will need to take four copies of the summons and two copies of the complaints to the Court to be signed by the Court. The Court will keep one of each and return the others to the GLO for service.
- 14 The GLO will then have to arrange to copy the summons and complaints and arrange for service (as before at 9). They must retain one original and serve at least one original on the travellers. Naturally it would be a good idea to make numerous copies so that a copy of the summons can be handed to all on site and be put up on site as appropriate (in plastic wallets etc).

- 15 NOTE: Remember to get those who serve the summons to sign a Certificate of Service (as before at 10).
- 16 HLS will prepare submission for Court.
- 17 HLS will make sure you have deeds for the land in question so that we can prove our ownership/interest (see 5 above)
- 18 HLS with the GLO will make sure that they have a plan (see 6 above) of the site and that "X" marks where the incursion is situated (note plans from deeds are often way out of date).
- 19 HLS will prepare Court Order (for the Magistrates to sign if they decide to grant an Order).
- 20 HLS will prepare a Court bundle which includes the welfare report, the Direction as served, the Summons as served, Certificates of Service and a plan of the site.
- 21 HLS will ask the GLO to arrange for someone to visit the site before the Court to check whether travellers are still there. If they have gone, we will need to withdraw. HLS will notify the Court
- 22 A representative of HLS will attend Court with the GLO and the witness, if different.
- 23 If the Magistrates grant the Order, this will need to be executed. The Gypsy Liaison Officer will need to contact police to help out in this regard in liaison with the Officers who have assisted you.





property and remove the vehicles and any other  
they have with them from the land forthwith.  
That Hampshire County Council by its officers  
and servants be authorised to take such steps  
as are reasonably necessary to ensure that this  
Order is complied with and in particular is  
authorised to enter upon the said land being  
and is further authorised to take such steps as  
are reasonable necessary in relation to securing  
entry to the land and the removal of the said  
vehicles or other property  
Justice of the Peace

**COMPLAINT FOR ORDER TO REMOVE VEHICLES UNLAWFULLY ON LAND  
SECTION 78 CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994**

DATE :

DEFENDANTS : Persons unknown - all occupants of vehicles  
on/at land known as

ADDRESS : Vehicles occupying the land known as

MATTER OF COMPLAINT : The Defendants continue to occupy land known  
as in contravention  
of a Direction Notice served under Section 78 of  
the Criminal and Public Order Act 1994

ON THE COMPLAINT OF : Kevin Gardner LLB Solicitor, Head of Legal  
Services, Hampshire County Council

COMPLAINANT : Hampshire County Council

ADDRESS : Chief Executive's Department, Hampshire  
County Council, The Castle, Winchester SO23  
8UJ

Signed ..... Dated .....

Kevin Gardner LLB Solicitor  
Head of Legal Services  
Hampshire County Council  
The Castle  
Winchester

Hampshire SO23 8UJ

Taken before me .....  
Justice of the Peace  
Clerk to Magistrates Court

**Certificate of Service**  
**(Criminal Procedure Rules r 4.2)**

I, \_\_\_\_\_ of Hampshire County Council, The Castle,  
Winchester in Hampshire certify that at \_\_\_\_\_ hours on \_\_\_\_\_ day of May  
20\_\_\_\_, I served the occupiers of vehicles on or at land at  
in Hampshire with the Summons dated \_\_\_\_\_ 20 of which this is a true copy  
by:

Displaying the said Summons on the land in question in manner designed to  
ensure that it is likely to be seen by any person camping on the land as per  
S79(2) and (3) Criminal Justice and Public Order Act 1994 and /or Serving  
said Summons on the occupiers personally

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2011

Signed.....