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## MANAGING UNWANTED GUESTS HOW TO DEAL WITH ANIMAL RIGHTS ACTIVISTS AND OTHER UNEXPECTED VISITORS

By Matthew Knight

Wherever animals are farmed or kept or used there is potential for problems from people who may have different interests, hold opposing views or misunderstand what is happening. These include not just committed Animal Rights Activists, but anyone else who is on the land or premises without lawful authority. These could be people walking their dogs, birdwatchers, members of local badger watch groups, as well as RSPB and RSPCA employees.

None of these have any rights on private land or property where there is no legal public access. In these cases it is the occupier who should be asking questions: "who are you?", "can I help you?", "what do you want?", "are you aware that this is private land and not open to the public?" He should *obtain* information, not provide it.

### **Animal Rights Activists**

Typical offences committed by Animal Rights Activists are likely to be criminal damage to vehicles, cages etc., public order offences (i.e. verbal abuse and/or threats) and assaults.

In addition, there are two offences that may be encountered. Both can be difficult to prove and the police are often reluctant to properly investigate them, but in the countryside context they should not be overlooked. These are:

- Harassment, under the Protection from Harassment Act 1997, where conduct is repeated on a number of separate occasions over a period of time. This might include name calling, intrusive videoing or persistent following of staff and their families going about their routine business.
- Aggravated trespass, under section 68 of the Criminal Justice and Public Order Act 1994, where a person enters private land without authority and engages in conduct intended to disrupt or obstruct a lawful activity.

Aggravated trespass is only committed where persons engaging or about to engage in the lawful activity are physically present on the land at the time of the trespass. The offence also depends on the activity itself being "lawful". In 2008 a prosecution involving saboteurs of the Brindle Shoot in Lancashire collapsed, because the Shoot, which employed five or more employees, had failed to carry out a health and safety risk assessment. (This case demonstrates the importance of complying with the legal requirements, but a minor breach of health and safety legislation does not automatically render an activity unlawful. The *fundamental* activity may still be lawful despite breaches of the law in the way it is carried out (e.g. *Hibberd v DPP*, 1966).)

Whenever an offence has been committed, or there is a risk of a breach of the peace (i.e. violence) the police should be called (dialling 999 if necessary). Identifying the location will be essential as the police may not know the area, especially if they are drafted in from a neighbouring police station because it is an emergency. Ideally, an Ordnance Survey co-ordinate (longitude and latitude) should be provided, as police often now use helicopters and such information can greatly assist.

### **Citizen's Arrest**

If it is not possible to wait for the police, then in certain circumstances there is a power available to every member of the public make a citizen's arrest. Under s.24A of the Police and Criminal Evidence Act 2004, any person other than a constable may arrest anyone whom there are reasonable grounds to suspect is committing or has committed an *indictable* offence. Not all offences are indictable, only those that could be dealt with at a Crown Court. This excludes vulgar abuse, minor assaults where no injury is caused and criminal damage where the damage is less than £5,000. The power may only be exercised where it is necessary to prevent physical injury, loss or damage to property or making off before the police arrive and where it is not reasonably practicable for the police be left to make the arrest.

Any citizen may also arrest at common law where: (a) a breach of the peace (i.e. actual violence) has occurred in the presence of the person making the arrest or (b) the arrestor reasonably believes that such a breach will be committed in the immediate future by the person arrested or (c) a breach has been committed and it is reasonably believed that a renewal of it is threatened.

In making a citizen's arrest only reasonable force may be used. Excessive force would itself be an assault, which could lead to prosecution, as well as a claim for damages for trespass to the person and false imprisonment. The police and the courts do not like the use of self-help measures. Any use of force must always be reasonable, and self-help is best regarded as a measure of last resort.

### **Removal of Trespassers**

Trespassing itself is not a criminal matter, and where no offence has yet been committed and there are insufficient grounds to believe there will be a breach of the peace the police may be unwilling to assist. In that case, the exercise of common law powers may be the only option.

If a trespasser peaceably enters or is on land, the landholder - the person who is in or entitled to possession - may request him to leave and if he refuses the landholder or his representative may remove him from the land using no more force than is reasonably necessary. If a trespasser enters with a threat or use of force the landholder may remove him without a previous request to depart. As with the citizen's arrest the use of such common law powers requires great care as if the force used in turning out a trespasser is excessive then this will amount to trespass upon the person of the trespasser as well as a criminal assault.

### **Trespassing Dogs and Cats**

Trespassing laws are not only applicable to humans but also the animals that they are responsible for. In practice however this is difficult to prove especially for felines. Domesticated cats and dogs are property and therefore damaging or harming them (including shooting them) in some way could be seen as criminal damage (a criminal act in contravention of the Criminal Damage Act 1971) or an act contrary to the Animal Welfare Act 2006 (details of which are set out above) if the cat or dog was shot and wounded rather than shot and killed cleanly.

The Environmental Protection Act 1990 requires the finder of any stray dog to return it to its owner if known or ascertainable or to take it to the nearest police station. If the finder does not know and cannot find out the legal owner and wants to keep the dog, they do not have to leave it at the police station but they do need to register its detention with the police.

If a dog or cat were to get in amongst your client's laying pens or rearing field or free range poultry there may be a defence to a charge of harming the dog or cat in protection of your client's own or his employer's property. The destruction or damage to the dog or cat must be in order to protect property and at the time it was believed that the property was in immediate need of protection and that the means of protection were reasonable having regard to all the circumstances

Whether it was reasonable or not: the question is not whether the means of protection adopted was objectively reasonable, having regard to all the circumstances, but whether the protector believed them to be so, and it is immaterial whether his belief was justified, provided it was honestly held.

### **Controlling Dogs**

There is no law specifying that dogs must be kept on a lead on a right of way or in any other public place, but local authorities can make an order under section 27 of the Road Traffic Act 1988 to introduce this as a requirement on designated highways. Additionally, the dog must be allowed to walk only along the line of a public right of way. An act of trespass may be committed against the land owner if it wanders too far away from the route, but this would not be something the local authority would be likely to take action against. However, when on any enclosed land with livestock present all dogs must be on a lead or 'under close control'.

Under the Dogs (Protection of Livestock) Act 1953 the owner, and anyone else under whose control the dog is at the time, will be guilty of an offence if it worries livestock on agricultural land. The dog must have been attacking or chasing livestock in such a way that it could reasonably be expected to cause injury or suffering or, in the case of females, abortion or the loss or diminution of their produce. An offence is not committed if at the time of the worrying the livestock were trespassing, the dog belonged to the owner of the land on which the trespassing livestock were and the person in charge of the dog did not cause the dog to attack the livestock. The definition of 'livestock' includes cattle, sheep, goats, swine, horses and poultry. It does not include pheasants, partridges or other game

birds or animals. Nor does it extend to deer either in the wild or in parks. It probably does not apply to farmed deer either.

Sheep are extended further protection as dogs must be on a lead or otherwise under close control' in a field or enclosure containing sheep.

Farmers are permitted to shoot dogs that are worrying, or are about to worry, farm livestock. This is outlined in the Animals Act 1971 section 9, which also states that the farmer is not liable to compensate the dog's owner in such circumstances. Any dog which is not a working dog can be regarded as worrying livestock merely by being off the lead and not under close control in a field or enclosure where there are free range poultry. A landowner could shoot such a dog, if it can be proved that the action was necessary to protect livestock and that it was reported to the police within 48 hours. The dog's owner can then be subject to all the above penalties too.

If a dog or indeed any animal injures a person or animal or damages private property, the owner or person responsible may be liable for damages. This would be a civil claim and not necessarily a criminal offence although there are criminal offences that could be committed including contravention of the Dangerous Dogs Act 1991.

### **Countryside & Rights of Way Act 2000 "CROW"**

CROW gives the public a right of open access to land mapped as "open country". This includes all common or unenclosed land, mountains, moors, heaths and downs. If your beat is open access land then the public can legally enter onto that land to walk, sightsee, bird-watch, climb or run and for other air and exercise activities. There is a general rule that all dogs on open access land must be kept on a short lead between 1 March and 31 July each year, or at all times if around livestock or on a coastal margin. In some circumstances dogs can be excluded completely, for example in lambing fields and during nesting time on grouse moors.

However, even though there is a general right of access to open access land, CROW prohibits certain activities on that land without the express permission of the landowner or occupier. Those activities include:

- riding a horse or bicycle;
- driving a vehicle;
- bringing an animal, other than a dog;
- camping;
- playing organised games;
- hang-gliding or paragliding;
- taking samples of blanket bog;
- using a metal detector;
- testing peat depths;

- running a commercial activity on the land such as trading or selling, charging other visitors for any goods or services or filming, photographing, taking samples or making maps;
- removing, damaging, or destroying any plant, shrub, tree or root unless by accident;
- taking samples of heather or other plants;
- lighting, causing or risking a fire;
- damaging hedges, fences, walls, crops or anything else on the land;
- leaving gates open that are not already propped or fastened open;
- leaving litter;
- disturbing livestock, wildlife or habitats unless by accident;
- posting any notices; and
- committing any criminal offences.

In addition, CROW restricts access to certain parts of open access land, including buildings and their curtilage, such as courtyards, land within 20 metres of a dwelling or a building containing livestock, parks and gardens, land covered by structures like electricity substations or telephone masts, quarries and other active mineral workings, railways and tramways, golf courses and race courses, aerodromes, land being lawfully developed in one of the ways above, land ploughed for the growing of crops or trees within the past year, temporary livestock pens, racehorse training gallops or land under Ministry of Defence byelaws, such as most military training areas.

If you occupy or own open access land then you will generally not be liable for any injury caused to a member of public on that land, unless you knowingly or recklessly create a risk of injury. However, liability is ultimately down to the interpretation of the Court and so legal advice is always recommended. It is also advisable to put up signage and notices to try to avoid any conflict between your land management activities and the public's right of access. Effective and well-placed signs can also help to limit any occupier's liability.

For certain activities you may be able to apply for a restriction on public access. This will be overseen by your local planning authority: in most cases a District Council but the National Park Authority in any National Park. If the restriction is going to last for less than 28 days, then there is no need to apply for a permit. On farmland it is the farm tenant who has the 28-day allowance – not the landowner. You cannot use the 28-day allowance on bank holidays, any Saturday between 1 June and 11 August, any Sunday between 1 June and 30 September or for more than 4 weekend days in a year. For any other restriction you will not need a permit, but you will need to notify Natural England – the amount of notice you will need to give will depend on the circumstances.

Without a valid permit any obstruction preventing public use of open access land will be illegal, and the local planning authority may issue a notice requiring the removal of any obstruction. If two or more notices have been served within 36 months, then the local planning authority may apply to the Magistrates' Court for an Order for the removal of the



obstruction. If that Order is not complied with then the landowner or farmer will be liable on summary conviction to a fine, and the local planning authority will be allowed to remove the obstruction itself at the farmer or landowner's expense.

### **Incitement to Commit Criminal Damage**

There are certain instances when an offence can be committed even though the acts comprise no more than planning of that act, even if the act itself was never carried out. These are known as inchoate offences.

Part 2 of the Serious Crime Act 2007 creates three inchoate offences of intentionally encouraging or assisting an offence, encouraging or assisting an offence believing it will be committed and encouraging or assisting offences believing one or more will be committed.

Further, under the Criminal Attempts Act 1981 a person will be guilty of an offence if they do an act, which is more than preparatory to committing the offence, with the intention of committing the offence. In each case it will be a question of fact as to whether the accused has gone far enough towards the full offence having been committed to constitute an attempt in law. In the case of saboteurs, it is likely that an offence would be committed if a saboteur entered onto land with intent to cause criminal damage, however merely planning the offence and purchasing tools will probably not be enough.

There is also another offence of conspiracy; where two or more people agree to carry out a criminal scheme that agreement constitutes a criminal offence itself and nothing need be done in pursuit of that agreement. Withdrawal from the agreement does not absolve the person from committing the crime, however it can be used in mitigation.

### **Intimidation Including Through Social Media**

Various offences can be committed through the use of threatening language, including via social media. For example, it is an offence under the Offences Against the Person Act 1861 to threaten to kill, and it is an offence under the Criminal Damage Act 1971 to threaten to cause criminal damage. Harassment is also an offence under the Protection from Harassment Act 1997, however, to constitute "harassment" the activity must be a course of conduct i.e. not a one off. Therefore, a single letter, social media post or email would probably not constitute harassment.

Under the Malicious Communications Act 1988 it is an offence for any person to send another person a letter, electronic communication or article of any description which conveys a message which is indecent or grossly offensive, threatening or containing information which is knowingly untrue. It is a defence to show that the threat was made to enforce a reasonable demand, and the sender believed the threat was a proper means of reinforcing the demand. It would also not be an offence if the sender did not intend to cause distress or anxiety to the recipient even if he in fact did so. For an offence to be committed the communication must have been sent to a recipient. Therefore, a post to a website or to a blog may not be an offence.

However, there is also another offence under the Communications Act 2003 of improper use of the public electronic communications network. Under this Act it is an offence for a

person to send by means of electronic communication a message or other matter that is grossly offensive or indecent or obscene or menacing in character. It is also an offence for a person to send a message which is knowingly false with the intent of causing annoyance, inconvenience or needless anxiety. There is no need for the message to be sent from one person to another – an offence is caused as soon as the message is sent or posted and will therefore cover posting to a blog or even the re-posting of a message by another.

### **Criminal Damage**

The Criminal Damage Act 1971 is the primary source of offences involving damage to property. The Act makes it an offence to knowingly or recklessly destroy or damage property belonging to another. The term “damage” is not defined by the act; however the Courts have interpreted this liberally and have included non-permanent damage such as smearing mud. The term “property” is defined and includes anything of a tangible nature including wild animals which have been tamed or which are ordinarily kept in captivity or any other wild creatures or their carcasses but only if they have been reduced into possession which has not been lost or abandoned. This would, therefore, include game birds in cages but not once they are released.

It is also an offence to threaten to damage or destroy someone else’s property. It is also an offence for someone to have in his custody without lawful excuse any item with which he is intending to destroy or damage property belonging to another person – for example bolt cutters or a hacksaw or a sledgehammer on open access land.

### **Unlawful Surveys**

Anyone entering onto private land to conduct surveys without permission will amount to trespass. This will also be the case for open access land, because CROW expressly prohibits this. Please see Removal of Trespassers above.

### **Covert Surveillance**

Most surveillance is either overt or covert – overt surveillance is in the open and visible or audible to those being recorded. Covert surveillance is undercover and without the knowledge of the target.

In general, taking photographs or videos of a person in or from a public place is not unlawful. Having said that, repeatedly filming or photographing someone could constitute an offence of Harassment. If the person taking the videos or photographs is doing so in a disorderly manner, then this may constitute a breach of the peace at common law or an offence under the Public Order Act 1986.

Under the Human Rights Act 1998 every person has a right to a private and family life. The monitoring of your home or workplace would therefore constitute a breach of your rights. However, the Human Rights Act 1998 is not enforceable against private individuals – it can only be enforced against public bodies. If the police or your local authority fail to take action to stop any breaches of your rights which they are aware of then this may give rise to an action against them – a decision of the Supreme Court in the John Worboys case confirms that the police have a duty under the Human Rights Act to properly investigate ‘serious’ crimes. Although infrequent surveillance is unlikely to be considered a serious crime,

constant surveillance or surveillance accompanied by threats may well be. Similarly, multiple failures by the police to investigate will be likely to be a breach of your human rights.

Further offences may be committed by the storing of images or videos and may contravene the Data Protection Act 2018.

It is becoming more and more frequent for people to use drones, which until now has been largely unregulated, However, the law is slowly catching up in this regard. At present drones weighing up to 20kg must remain under the direct visual contact of the operator. It is illegal for drones weighing up to 150kg to be flown above 400 meters and cannot be flown within 50 meters of a person or 150 meters of a vehicle or house not under the control of the operator. Larger drones are subject to flight plan permission from the Civil Aviation Authority.

Static cameras are also commonly used because they can be placed in a hidden location and can film continuously for many days. The operator is at the highest risk of discovery when they are placing or removing the camera, and so you should be suspicious of any person who is on your land without permission or who is acting suspiciously. The operator is likely to be trespassing if on private land.

Unfortunately there is no compunction under UK law to prohibit evidence obtained unlawfully unless the unlawful action calls into question the reliability of the evidence itself. Therefore if a video or photograph contains what it purports to show and has not been tampered with it will likely be admitted as evidence.

If surveillance equipment is discovered on your client's land then he should record its location, who found it, when it was discovered etc. You should then make sure that there is nothing remiss to attract the attention of the authorities. If the police do conduct a search of your client's property he needs to be sure that they do not discover anything else which may cause him difficulties, for example unsecure firearms. There is also nothing wrong with spying on the spies – so by all means tell your client to set up his own recording equipment to cover the area. However, he should avoid any confrontations which may lead to further complaints. Nor should any equipment be damaged. If possible, it is advisable to remove the surveillance equipment (without damaging it) and take a copy of whatever is on it. A practical option is to then report the matter to the police and hand the surveillance equipment to them. If the item is collected from the police, they should be asked to tell your client who laid claim to it so that he can pursue a civil claim. This should be made clear when your client does the handover.

### **Defamation**

Posting photographs and film to social media showing a legal activity and stating that it is illegal is an actionable libel. There have been examples of this involving poultrymen, gamekeepers and others involve in game shooting or farming during the last year or so.



Similarly, publishing a press release alleging an illegal activity is an actionable libel. However, fair comment on a matter of public interest is not actionable and nor is a report, however adverse, which is true.

### **Demonstrations and Public Protests**

There is a well-established right to demonstrate support for or opposition to an individual or company or an activity at Common Law and the Human Rights Act 1998 has confirmed and amplified this in the last twenty years or so. Demonstrations and protests which degenerate into violence or criminal damage are likely to result in arrest, prosecution and conviction.

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