

Troubled by the Hunt? - A guide to your property rights

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Troubled by the Hunt? A guide to your property rights

Introduction

This booklet is designed to provide you with basic information about the law relating to hunts, their supporters and their hounds in relation to incidents of entry onto private land and property which may or may not result in actual physical damage either to property or to individuals.

It is hoped that the information will be of use to landowners, livestock owners and pet owners, who may come into contact with various types of hunt. It offers practical advice on what steps may be taken to prevent the hunt from entering onto your land and what steps may be taken to obtain compensation and to prevent entry recurring in the event that the hunt does trespass. This leaflet is intended as a guide only and should not be regarded as an authoritative statement of law.

The information provided relates only to the legal position in England and Wales. If you find yourself involved in any dispute with the hunt or any other persons connected with the hunt, it is strongly recommended that you seek professional advice from a solicitor who can advise you fully on your legal position and the remedies which are available to you. It is also important that you contact the League Against Cruel Sports which keeps a record of all disputes involving hunts, and who can put you in contact with a firm of solicitors experienced in hunt-related matters.

Havoc Caused By The Hunt

Every hunting season there are numerous recorded incidents of hunts invading private property, causing damage, worrying livestock and even killing pets. An investigation reported by the Veterinary Record has revealed that foxhounds defecating on sheep pasture are a major cause of tapeworm damage to the livers of sheep and lambs. Numerous accidents have also been caused by hounds and riders crossing roads and railway lines.

All hunting ceased during 2001 due to the terrible outbreak of foot and mouth disease (FMD) in Britain. Hunting with hounds resumed in December 2001 under a permit system. Permits allowing hunts to resume under certain conditions designed to minimise the risk of spreading FMD or other animal diseases, were issued to hunts by DEFRA (Department of the Environment, Food and Rural Affairs). DEFRA has the power to revoke permits to hunt if evidence of breaches of the guidelines is produced.

The veterinary risk assessment drawn up by animal health experts in order to assess the FMD risk posed by hunting with dogs suggests that hunt contact with susceptible livestock amounts to a potential foot and mouth disease risk and advises the avoidance of all livestock by hunts. The assessment also states that any activity that causes wild animals such as deer (potential FMD carriers) to stray from their natural habitat should be avoided. Hunts are deemed to pose a particular FMD risk because of their practice of feeding raw 'fallen stock' to the hounds.

All incidents of havoc involving hunts should be reported to the Police who may be able to take criminal proceedings. The majority of trespass incidents are, however, a matter of civil law and advice should be sought from a solicitor. It is helpful if all matters are reported to the League Against

Cruel Sports, which is happy to supply initial advice to any individual troubled by hunts.

Trespass By Hounds

It has now been established that the entry onto land by hounds alone can constitute trespass. If the Master of the Hunt knows that there is a risk, whilst in pursuit of quarry, that hounds may enter or cross private land during the hunt, then he may be liable for allowing them to enter the land or for failing to prevent them from doing so by exercising proper control over them. This liability of the Master may also extend to the hunt's servants or followers.

Does The Hunt Have The Right To Cross My Land?

Contrary to popular belief, hunts do not have a right to cross your land unless expressly authorised to do so.

An area of land may be subject to various rights that have been granted to certain parties. Huntsmen or shooters may have 'sporting rights' in respect of the land or there may be an easement over the land allowing persons to use the land in a certain way or for certain purposes, such as hunting.

A grant of such rights or easements will usually appear in the title deeds to your land. A solicitor will be able to advise you if any such rights exist. This is particularly important where legal proceedings are being considered.

Land may also be subject to certain 'rights of way' such as footpaths and bridle paths. The existence of these rights of way can be checked by reference to the local authority for your area. The hunt and its riders may not use a footpath and an act of trespass is committed against the landowner if horses are ridden or led over such a path. The hunt may however, use a bridle path provided that its hounds do not stray off the path as this would constitute trespass. Hunt vehicles cannot be driven on a bridle path.

It makes no difference to these principles if land is fenced as they apply equally to enclosed or unenclosed land.

Harassment And Abuse

Some landowners and others who are opposed to hunting with hounds find themselves subjected to harassment and abuse by hunt staff and followers. Threatening, abusive or insulting words or behaviour causing harassment, alarm or distress can in some circumstances amount to a serious criminal offence. A person who believes he or she is a victim should call the police immediately. It is always helpful if the victim or a witness can make detailed notes or a photographic or video record. The police have the power to arrest the harasser but if they prove to be ineffective, it is possible to sue in a civil court for damages and / or an injunction. This procedure is not easy and legal advice should be sought before a summons is issued. An unsuccessful court action could result in an order for costs against the person bringing the claim.

Who Is Responsible For The Hunt's Actions?

The conduct of the hunt is the responsibility of the Master or the Joint Masters of that hunt. Any correspondence relating to matters involving the hunt should be addressed to the Master or Senior Joint Master. Legal proceedings in respect of the actions of the hunt will usually be brought against these individuals although in some circumstances they may be brought against other identified persons. The League can supply the names and addresses of the current Masters of all the hunts.

What Can I Do To Prevent Trespass And Damage Occurring?

Many hunts will send out cards warning people that they will be in an area for a few days. If the hunt officials are not informed to the contrary, they will sometimes assume, incorrectly, that they can enter onto private land. This assumption does not constitute a defence at law although it may be a defence if they can show that for some reason they thought they had the consent of the landowner. A short but firm 'warning off' letter will make your position clear and ensure that there can be no dispute about your property's boundaries or whether or not the hunt has permission to use your land.

You should send a letter preferably by recorded delivery, to the Master or Joint Masters of the various hunts that operate in your area. The letters should formally advise the Masters that they, their followers, their hounds and their servants do not have any permission to enter onto your land and that should they do so, action will be taken. A plan of your property clearly showing its boundaries should accompany each letter. It is important to retain copies of any letters sent, as these may be useful if it becomes necessary to take any further action.

Sample letter:-

RECORDED DELIVERY

Date

Dear Sir,

I wish to advise you that my property is closed at all times to the officials, followers, horses and hounds of your hunt.

I enclose a map of my property showing its boundaries.

In the event of there being any unauthorised entry onto my property, legal action may be taken against you.

Yours faithfully,

What Can I Do If The Hunt Has Trespassed Onto My Land And / Or Caused Damage?

a) Obtain evidence

It is always sensible to keep a loaded camera handy if you anticipate any unauthorised entry by the hunt onto your land. A photograph or a video recording can provide undeniable evidence of acts committed by the hunt. If possible, try to make sure the date and time are recorded onto the photograph or video tape.

If there is any visible damage caused by the hunt or any physical signs of trespass, then these should be filmed or photographed as soon as possible before they are removed or rectified.

Eyewitness evidence is very important. If anybody has witnessed the trespass or damage, ask them to record what they saw in writing as soon as possible after the event. The more eyewitnesses you have the stronger your case may be. Any other evidence that may be useful should be retained.

b) Seek legal advice

If an unauthorised entry occurs you should contact the League Against Cruel Sports and/or a solicitor immediately.

Before taking any action, your solicitor will need to see copies of any letters passing between yourself and the Master of the Hunt either before or after the incident, including any 'warning off' letter. Your solicitor will also need to see the title deeds to your property in case they contain any reference to rights over the land. Any relevant photographs, video recordings and witness statements should also be made available to your solicitor. Do not worry if you have not yet had the opportunity to obtain any of the above as your solicitors will be able to advise you in detail as to what evidence will be needed to support your case against the hunt.

Before issuing any court proceedings, your solicitor will contact the Master or Senior Joint Master of the relevant hunt to advise him that they have been instructed by you to pursue a claim on your behalf. This is commonly known as a 'letter before action'.

It is usually better to consult solicitors who have previous experience in such cases. Powells Solicitors, of 7-13 Oxford Street, Weston-super-Mare, North Somerset BS23 1TE (telephone: 01934 623501; fax: 01934 635036; email: info@powellslaw.com) has over 20 years' experience in dealing with civil cases and prosecutions involving animal welfare, hunt trespass and related property rights. They are prepared to give free telephone advice for up to 10 minutes and in any case where they are instructed on a private fee paying basis, they will donate £25 to the League Against Cruel Sports.

c) Consider any offers of settlement

Correspondence with the Master or indeed solicitors appointed by the hunt may result in the hunt tendering a formal apology and/or offering a sum of money to you by way of compensation for the inconvenience, and to reimburse you for the cost of any damage caused. Your solicitor will advise you as to whether or not it is appropriate to accept such offers. If you have not consulted a solicitor and the hunt make any offers to you, it is advisable to seek legal advice before accepting or rejecting the offer.

What If Court Proceedings Are Necessary?

a) Commencing proceedings

If your claim cannot be settled then your solicitor may advise you to commence a court action against the hunt or certain individuals.

Your solicitor will issue a summons setting out your claim and this will be served upon the persons against whom the claim is being made. They will then have a set period of time in which to enter a defence. If they fail to enter a defence then judgment can be obtained against them. If your claim was not for a specified amount then it may be necessary for there to be a hearing before a judge who will assess the amount of damages to which you will be entitled.

If a defence is entered, then depending on the value of your claim, the court will either refer the matter to an informal hearing known as an 'arbitration', or provide a timetable which should be followed to bring the matter to trial. If your claim is worth less than £5,000 it will be referred to arbitration unless it contains a claim for damages in respect of personal injuries worth in excess of £1,000. Personal injury claims valued at over £1,000 are not referred to arbitration.

b) Costs

If your action is successful you will usually be awarded your costs. If your claim is subject to arbitration then those costs would only consist of the court fee and the fixed costs shown on the summons. In other actions you would be entitled to recover all of your costs although in practice, due to the court's process of reviewing the costs claimed known as 'taxation', you will usually recover approximately 70% of your actual costs.

If your claim is unsuccessful, then you will usually be ordered to pay your opponent's costs subject to the limitations set out above.

c) Payments into court

At some point during the court proceedings, your opponent may put forward an offer of settlement by paying a sum of money into court. The court will notify you of this and you will be given a period of 21 days in which to decide whether or not to accept the payment into court and in which to notify the court of your decision.

It is important that you take legal advice on whether or not to accept the payment into court as the decision may affect who eventually pays the cost of the action. If you are advised to accept the payment into court and do so, then the action is finished. This money will be paid out to you and your opponent will pay the costs up to the date of your accepting payment.

If you do not accept the payment into court then the action continues. If at the trial of your action you are successful in proving your claim and are awarded more than the amount of the payment into court, the opponent would be ordered to pay your costs in the usual way. If you are awarded less than the amount of the payment into court, then the court will consider that you were unreasonable in not accepting the payment into court when it was originally made, and you will be ordered to pay your opponent's costs from the date of the payment into court. The trial judge will not be told of the payment into court until after he has made the decision. If you are unsuccessful at trial then you will be ordered to pay your opponent's costs in the usual way.

You will see from the above information that making a payment into court is a very useful tactical step for your opponent. It is therefore important that you receive legal advice on whether or not it is appropriate to accept a payment into court.

What Can I Do If The Hunt Persists In Entering Upon My Property?

If the hunt repeatedly trespasses on to your property, whether or not it causes any damage, it may be possible to obtain what is known as an 'injunction'. This is an order made by the court, which seeks to restrain the hunt from entering on to your land. If the hunt continues to enter upon your land then the court will impose further penalties, and has the power to commit the offending person to prison.

As with any court action, it is always advisable to take legal advice before commencing. As an injunction is a very extreme measure, the court will need to be satisfied that the circumstances merit an injunction being ordered. The court will consider all relevant factors before making a decision, such as the frequency and extent of the trespass, whether there is any accompanying damage, what steps if any the hunt is taking to prevent trespass recurring, and whether the matter can be dealt with by way of an 'undertaking'. An undertaking is basically the hunt's promise to the court to cease the behaviour complained of. An undertaking will be given formally to the court and any breach of the undertaking is viewed most seriously as the hunt will be in contempt of court and again, the court has the power to commit the offending person to prison if circumstances merit it.

Be wary if the hunt offers a written undertaking at any time during your dealings with them. Unless the undertaking is given to the court it will be unenforceable.

Important Points To Remember

- 1 Send a 'warning off' letter to all Hunt Masters in the area.
- 2 Be ready in the event of entry by the hunt to collect evidence of the entry.
- 3 If entry does occur, notify the League Against Cruel Sports immediately and seek legal advice.

The League Against Cruel Sports campaigns for Parliament to ban the cruel sport of hunting with dogs. We have 2:1 support amongst the general public and the backing of a similar number of MPs. Your support for the League, by becoming a member or through a donation, would help us win our campaign.