

# Sign of the times

Summer 2015

A recent case has raised the question of whether displaying signage on property to prevent trespassers has any legal effect to prevent claims of rights by prescription.

*Bennett & Anor -v- Winterburn & Anor* [2015] UKUT 59 (TCC) is good news for landowners looking for an easy way to prevent third parties from acquiring rights over their land.

Trespassers who use land for 20 years or more can claim an easement by prescription, if they can show that this use has been without the permission of the land owner, and without force or secrecy. Previous case law has ruled that the need for the use to be exercised 'without force' requires, for example, the trespasser breaking open locked gates or climbing over fences, for the claim to be rejected. This case, however, suggests that the use of signage is sufficient to result in the trespasser using 'force' to exercise the use of the land, whether or not the signs were displayed in response to the trespass.

## Background

In this case, the right in question was claimed by the owners of a fish and chip shop, which adjoined the local Conservative Club. The Club benefitted from a car park, which patrons of the chip shop would regularly use to park their vehicles and then cut across the car park on foot to access the shop. This was in direct contravention of a sign which stated that the car park was for the use of Club members only. The sign was clearly visible to those using the car park and a further sign was displayed in the Club window. There were occasional confrontations with the Club steward, but otherwise the signs were not enforced.

It was found that the signs were clear and unambiguous, and left no doubt at all to the world at large that the car park was solely for the use of the Club patrons. Therefore, any use of the car park in contravention of the signs was a use of 'force' and accordingly a prescriptive right could not be claimed.

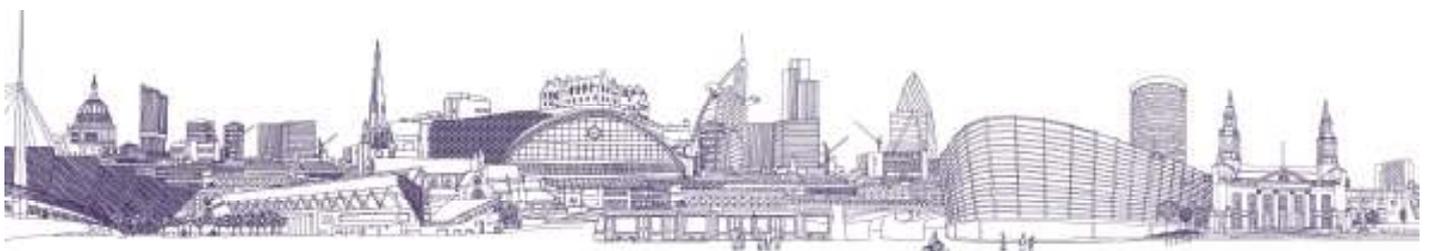
However, this only related to the parking of cars, and not to the use of the car park on foot. Accordingly, the claim for an easement for a right of way on foot was upheld, as this was not specifically prevented by the sign.

## Analysis

The case suggests that landowners would be wise to erect prohibitive signage as a matter of course to prevent third party claims. However, as this case illustrates, there is a risk of omission, and such a sign will not keep land secure against every claim, unless it is clearly intended to. Whilst the signage erected by the club specifically prevented parking by non-patrons, there was no mention of anyone not using the car park to gain access to other premises. There is a paradox that was clearly illustrated by the case of *Beresford -v- Sunderland City Council* [2004] 1 AC 889 that the landowner displaying a sign stating 'Private Land - Keep Out' would be in a weaker position (if he allows his notice to be ignored) than the landowner displaying a sign stating 'The public have permission to enter this land on foot for recreation, but this permission may be withdrawn at any time', thus granting the permission necessary to thwart a claim. This is unlikely, however, to sit comfortably with those land owners trying to prevent the use of their land by third parties.

Any signs which a landowner erects would need to be kept visible and well maintained - if they were to be obscured by undergrowth or become illegible the fact of their mere existence would be of no use in defending these claims.

Therefore, if you are considering erecting signs for the purpose of preventing claims to easements by prescription, you will need to consider the wording very carefully to ensure that every eventuality is covered.



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If you would like to discuss any of the issues raised in this update, please contact:



**Jill Briggs**  
Associate  
RDU  
dt: +44 (0) 121 234 0281  
[Jill.Briggs@gateleyplc.com](mailto:Jill.Briggs@gateleyplc.com)

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