



# Divine intervention? The case of the Clameur de Haro

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With its roots in medieval times, the Clameur de Haro holds a special place in Guernsey lore (and law). Stories are often told of instances in which landowners have gallantly invoked the cry to protect their land from harm. In more modern times, the instances of the call being made (and the circumstances surrounding them) have made good fodder for stories in the press. In most cases in recent times, such pleas have been unsuccessful or improperly raised.

## What exactly is the Clameur de Haro?

The Clameur is an ancient cry for justice, which is used when a person's real property (i.e. house/land) is under threat from the wrongful acts of another. The result of raising a Clameur is an immediate injunction; no further action can legally be taken until the Court has considered the matter. If the Court is satisfied with the complaint, the Clameur will be registered at the Greffe and a penalty is imposed if the contentious works are not ceased.

## In what circumstances can it be raised?

There are limited circumstances in which a Clameur can be raised. Broadly speaking, the Clameur may only be raised:

- in respect of land and buildings, not possessions;
- when the complainant has been in possession of their property for a year and a day;
- where there is an identifiable act by the accused which is the subject of the claim;
- in good faith by the complainant; and
- where the act complained of is unlawful.

Indeed, you could query the extent to which the original purpose of the Clameur can legitimately be applied against commercial developments where the proposed building works would (or at least should) have progressed through a series of planning applications and meetings and even Royal Court hearings. At each of these points those raising the Clameur would have had the opportunity to have their concerns voiced. The Clameur has the potential to cause costly disruption to legitimate developments and those that knowingly wrongfully raise the Clameur may put themselves at risk for the costs of that disruption.

The Clameur is a much cherished institution and, rightly, still has a place in Guernsey law but those seeking to raise it ought to bear in mind its original roots and use with circumspect.

## How do you raise it?

To successfully raise a Clameur, the complainant (in the presence of two witnesses) must fall to their knees at the site of the alleged wrongdoing and make the following cry.

"Haro! Haro! Haro! À l'aide, mon Prince, on me fait tort."

(translation "Haro! Haro! Haro! Help me, my Prince, I am being wronged.")

After the cry, both the Lord's prayer and a Grace must be recited by the complainant in French.

After the theatrical aspect has been attended to, it is necessary to register a Clameur with the Court. This is the stage at which those raising the call often fall down. Within 24 hours of raising the Clameur, the complainant must appear before the Bailiff to swear an affidavit and produce the two witnesses to confirm that the formalities associated with raising the Clameur have been complied with.

Once satisfied that the procedure has been correctly followed, the Bailiff will turn his attention to the substance of the claim and, if they are content that the reason for the

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complainant invoking the Clameur is lawful, an order will be made to register the Clameur at the Greffe.

Notice must be provided of any Clameur raised against the party. Notice can take the form of either their presence at the scene when the Clameur is raised or by the service of a notice on them by HM Sergeant.

Wrongfully attempting to raise a Clameur leads to the complainant risking an order against them for costs. Admittedly, this is a little less draconian than the traditional penalty for a breach - spending a night imprisoned in Castle Cornet (for taking Haro's name in vain).

#### What is the effect?

The principal remedy offered under a Clameur is that the contentious act which is the subject of the complaint shall cease.

Once a Clameur has been successfully raised and registered at the Greffe, it is effective for a year and a day. After such time, the ability to take action under it will be prescribed. If the complainant wishes to prolong the effectiveness of their Clameur, they have exactly a year and a day from its granting to commence proceedings in the Royal Court to confirm the terms of the Clameur.

Any accused in breach of the terms of a valid Clameur, would be held in contempt of Court and liable to pay damages to the complainant. The accused has the ability to make an application to the Royal Court for the Clameur to be discharged.

#### Why is the Clameur still relevant?

Arguably the main reason for the continued use of the Clameur is the immediacy of its effect, although in modern times an additional perceived benefit is the publicity it can draw to your cause.

The more commonplace and modern remedy is for a complainant to obtain an injunction through the Royal Court.

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