



Occupiers Liability An Insurance Industry Perspective

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Insurance industry perspective

- Society – that enjoys outdoor and adventurous activities
- Understanding – that it is thanks to the co-operation of ‘occupiers’ (landowners) that a great deal of activity can take place at all
- Legal framework – that encourages and enables access to the countryside
- Case Law - that almost always finds in favour of ‘occupiers’
- BMC – which recognises the risks and ‘advises’ its members to be responsible for their own actions (RSA – BMC insurers)























Legal framework (Main Acts – England and Wales)

Occupiers Liability Acts

- 1957 (visitors)
 - Common duty of care
 - Reasonable safety – intended/permitted purposes
 - No obligation to a visitor who willingly accepts risks
- 1984 (trespassers)
 - Qualified duty of care
 - Known hazards/dangers
 - People might go near them
 - It would be reasonable to provide protection
 - No obligation to a person who willingly accepts risks

Countryside and Rights of Way Act, 2000

- No liability from 'natural' features
- Deliberate or reckless acts or omissions

What does the insurance industry want?

- To write 'profitable' business
- To have clients who conscientiously observe their 'duty of care' responsibilities to other people
- For there to be no accidents or injuries
- For there to be a defence, in a Civil Court, if something does go wrong

What do insurers want 'occupiers' to do?

Known 'Physical' Features

- Nothing!

Concealed/Known Hazards

- Fence them
- Sign them
- 'Police' them

Man Made Features

- Maintain them 'appropriately'

















What (case law) evidence supports insurers view?

Known 'Physical' Features

- **Tomlinson v Congleton (2003)**

Defined the risk of injury as one arising out of the dangerous activity, not the state of the premises.

“It will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land. If people want to climb mountains, go hang gliding or swim or dive in ponds or lakes, that is their affair.”

Lord Hoffman

THE END OF THE COMPENSATION CULTURE?!

2. **Fegan v Highland Council (2007)**

“An occupier of land containing natural phenomena such as rivers or cliffs, which present obvious dangers, is not required to take precautions against persons becoming injured by reason of those dangers - unless there are special risks such as unusual or unseen causes of danger”

Lord Johnston

What (case law) evidence supports insurers view (cont'd)

Special Risks

1. **Poll v Viscount Asquith**

Private landowner held liable for injuries sustained by a motorist, crushed when a diseased tree fell onto a public highway.

Judge found the landowner liable on the basis that a landowner was negligent in not ensuring a regular inspection of its trees by a sufficiently competent person.

2. **Herrington v BRB**

Occupier held liable for injuries sustained by a child trespassing on an electrified rail, via a dilapidated fence.

An occupier who knows or ought to know there are dangers on the premises owes trespassers a duty “to take such steps as common sense or common humanity would dictate.”

3. **Panett v McGuinness**

Contractors lit and then supervised a fire to burn rubbish on a demolition site. A 5 year old trespasser fell into the fire while the men were away and was badly burnt. They had chased children away many times before. They were held liable because they should have kept a lookout.

Compensation Culture – Sport & Recreation

- Civil Justice Reforms (1999) have reduced the number of claims
- More claims are now settled out of Court
- Claims inflation is increasing at an alarming rate!
- Participation in sport and recreation is 'safer' than it has ever been
- If something does go wrong people will usually not hesitate to make a claim – and it is very easy!

How can BMC 'influence' the insurance industry in a positive way?

- Promotion of the Participation Statement
- Dissemination of good quality information to members and other countryside users
- Close(r) liaison with organisations with a landowning interest?
 - Regular consultation
 - Better understanding
 - Planning and maintenance
 - 'Sponsorship' and recognition
 - Implementation strategies

An insurance industry perspective

Summary

- Be confident that you can 'safely' provide access to your 'land' for sporting and recreational purposes.
- Take 'reasonable' care to ensure concealed/hidden/special hazards are either 'known' to users or have prohibited access.
- Effectively maintain man made structures
- **Either do nothing well, or something well, but don't do anything badly!**
- Acknowledge climbers do voluntarily accept the risks associated with their activity, it is fundamental to the challenge of what they do
- (Continue to) work together with the BMC!