

*"How to work with landowners
and reduce fear of litigation"*

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Understanding
what we don't know

So, what do we need to understand?



Understanding landownership

What does this sign mean?



- *Why has the landowner deployed these signs?*
- Do they reveal:
 - A fear of a ‘compensation culture’?
 - A territoriality?
 - Something more prosaic?
- Are contemporary manifestations of risk, safety and liability **a polite proxy** for privacy or proprietorship?
- **How important is lay cognition of law and liability** in shaping this land management behaviour?

Our 2008 project

- Agencies in the *Countryside Recreation Network* asked the question:
 - *Are landowners' perceptions and understanding of legal liabilities a barrier to countryside access?*
- **Prof Lynn Crowe and I reviewed** available:
 - research;
 - case law;
 - policy; and
 - commentary
- and undertook **telephone interviews** of a sample of 21 landowners and representative bodies across the UK.
- This coping study was funded by: the **Forestry Commission, Northern Ireland Environment Agency, the Scottish Government and Sport Northern Ireland.**



Who we interviewed*

UK wide	England	Northern Ireland
Defence Estates	Environment Agency	Ulster Wildlife Trust
Forestry Commission	Yorkshire Water	Ulster Farmers' Union
NFU Mutual	Southern Water	National Trust - Northern Ireland
British Waterways	Country Land & Business Association	Sport Northern Ireland
	Nabarro LLP (solicitors)	Scotland
	Exeter City Council	Dundee City Council
Wales	Hawkstone Park (Shropshire)	NFU - Scotland
Countryside Council for Wales	Worcester County Council	Scottish Natural Heritage
		Scottish Rural Property & Business Association

* NB: it was agreed with the interviewees that their replies were given in a personal capacity, rather than on behalf of their employer organisation

Bennett & Crowe (2008)

The main findings from our interviews:

- The **'approximateness'** of legal cognition of landowners' legal duties / actual risk of liability
- A general view that **'we take the risks in our stride'**
- A (mild) belief that ***other* landowners may be restricting access**, but that they were not.
- But, our study had **not directly targeted small landowners**
 - (e.g. Individual farmers).



The *'Five Traits'*

Our interviewees suggested factors that may make smaller landowners more susceptible to liability fears:

- 1) **Isolation and fear of liability.**
- 2) **Marginal survival.**
- 3) **No gain from access.**
- 4) **Something valuable to protect.**
- 5) **A prior history of bad experiences with public access.**



My follow-on projects

How judicial attitudes to accidents involving child trespassers changed across the last century



The evolution of tree safety inspection



Tombstone stability anxieties



Pub premises management



MY RESEARCH THEMES

Studies of owners' anxieties about visitor safety

- cemeteries
- trees
- quarries

Studies of 'deep topography' – urban exploration, bunkerology, psychogeography, 'ruin porn' etc

Cultures of risk perception and 'object-reading'

'object reading' and cultures of enthusiasm

'object-reading' and circulating cultures of commodification

'object reading' and circulating norms of event and place framing

Studies of metal theft

Studies of mundane physical law

Understanding fear

Every sign has a story to tell



Bennett & Crowe (2008)

Our literature review's main findings:

- A number of US studies, these suggest:
 - Landowners are (intentionally?) ignorant of the protection that US law already gives them; and
 - Landowners rate privacy and prior bad experiences with visitors as more influential than liability fears
- Few UK studies on this issue
 - but those that do exist appear to echo the US studies
- Liability anxieties appear to increase when changes are proposed to the access regime

Fear

- Was access restriction motivated by **fear of liability** or **fear of change**?
- **Country Landowners and Business Association** (2007) survey of landowner concerns as part of its lobbying against the **Marine and Coastal Access Bill**, the exhibited responses parade a bestiary of modern folk devils:
 - Fear of crime
 - Fear of dogging
 - Fear of coastal erosion
 - Fear of paedophiles
 - Fear of unexploded bombs
 - Fear of golf balls
- Thus, it appears, wider **contemporary anxieties are projected onto this issue**.
 - Any appraisal of legal duties and/or liability risks is ancillary (if present at all).



Privacy and fear of the public hordes...

...dog walkers, ramblers, bird watchers, fell runners, archaeologists, geologists, fossil hunters, Dr Who fans, film makers, pagans, school parties, climbers, free swimmers, tomb stoners, divers, climbers, abseilers, pot-holers, mountain bikers, trail bikers, quad bikers, children at play, urban explorers, protestors, vandals, fly-tippers, thieves and/or terrorists...

An individual site case study



- So, next was a case study to investigate the 'small landowner' perspective
 - and to do so by seeking an interpretive understanding of the Landlord's *lifeworld*.
- Specifically:
 - How important was an appreciation of occupiers' liability law and/or liability fears in prompting the array of signage?
 - Could the *Five Traits* help to explain the Landlord's behaviour?
 - In essence, what story lay behind the signage?

Applying the *Five Traits*

The Five Traits	The Landlord
Isolation and fear of liability?	NO: Spoke in terms consistent with 'compensation culture' discourse, but no conscious fear. Optimistic worldview and confident in his abilities to cope via his 'good host' nature.
No gain from access?	NO: his business depends upon people coming
Something valuable to protect?	NO: the Field was currently use-less to him.
A prior history of bad experiences?	NO.
Marginal survival?	YES: reflects the precarious state of the small publican

New owner replicates existing warning



BEFORE the Landlord took over
(11 September 2007)



AFTER the Landlord took over
(22 November 2008)

The unwritten codes of place

- A 'pub' is a set of ordained spaces.
 - A 'lounge bar', a 'snug' or a 'tap room' all have expected physical arrangements – expectations that govern all pubs.
- As the Landlord noted:
 - "...Here you've got to be kid friendly where we are, in like the Tap Room you've got to be dog friendly: because **that's how it's always been...so it's easy for me to come and say "I'm not having any dogs in there" - but it's not; its part and parcel of this, the history of the pub I suppose**" (emphasis added)

Understanding litigation

The Outplan / Public Rights of Way Services Ltd (2011) study:

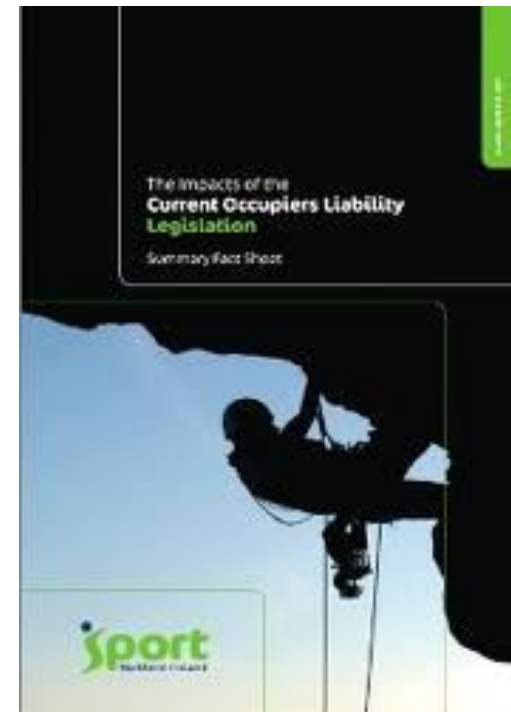
The Impacts of the current Occupiers' Liability legislation in Northern Ireland on outdoor recreation commissioned by Sport NI

- **The Reality of Claims**

- Found owners/managers unclear on:
 - What is 'informal outdoor recreation'?
 - Confusing Occupiers' liability and H&S law
 - General ignorance of what the law actually requires
- There is no flood of claims

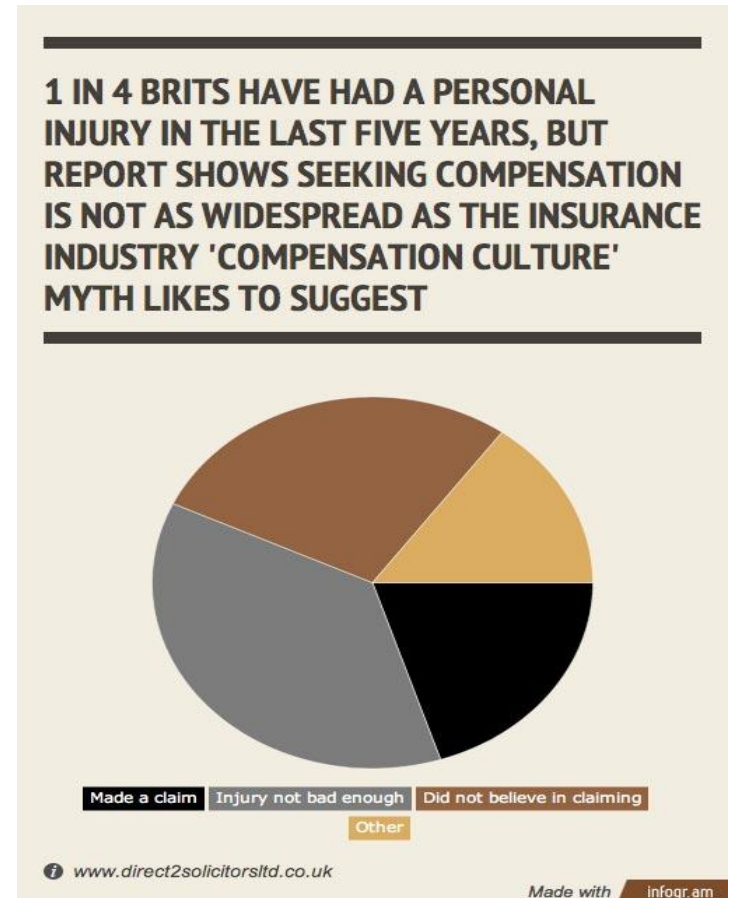
- **Perception is Nine Tenths of Reality**

- Found a culture of risk assessment, risk management and caution



Understanding litigation

- The gap between claims, media coverage and court cases
 - precedence, prominence and the 'day to day'
- Where images of liability come from
- 'Dead hand' of habit and approximation
- Safety in following the pack (for good and bad)



Understanding practicability

Hindsight

- *"We perhaps need to put some signage up here and work with the national parks to do something a bit more pro-active."*
 - Police Constable quoted in BBC local news report in aftermath of a 'tombstoning' fatality in North Yorkshire
- Likewise 'tombstone' legislating...



What you *could* do vs. what you *have* to do

- Lord Hoffman in *Tomlinson –v- Congleton Borough Council* (2003) case:

“I think 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. Of course the landowner for his own reasons wish to prohibit such activities. He may think that they are a danger or an inconvenience to himself or others. Or he may take a paternalist view and prefer people not to undertake risky activities on his land. He is entitled to impose such conditions, as the Council did by prohibiting swimming. But the law does not require him to do so”

Understanding recreation

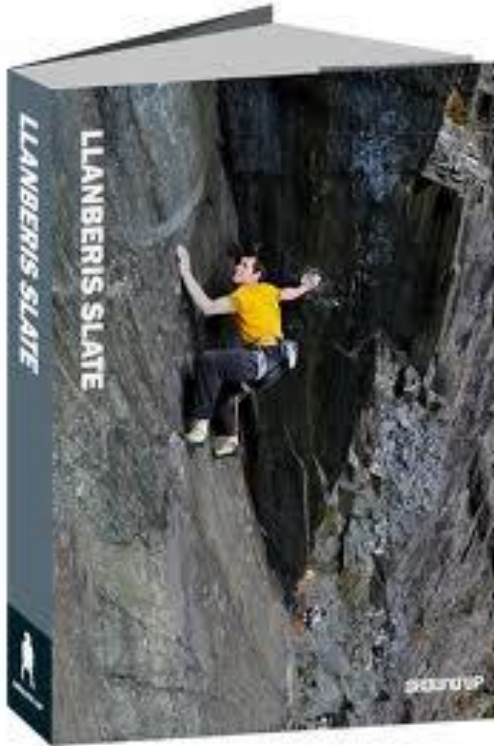
Understanding recreation



Understanding desire lines

...dog walkers, ramblers, bird watchers, fell runners, archaeologists, geologists, fossil hunters, Dr Who fans, film makers, pagans, school parties, climbers, free swimmers, tomb stoners, divers, climbers, abseilers, pot-holers, mountain bikers, trail bikers, quad bikers, children at play, urban explorers, protestors, vandals, fly-tippers, thieves and/or terrorists...

Why do they come? What do they want?



My 'recreational trespass' studies –
*metal thieves, climbers, bunker hunters, geo-cachers,
urban explorers and psychogeographers*

And what *are* their expectations for safety?



- The Outplan / Public Rights of Way Services Ltd (2011) study surveyed 360 recreational users about their walk-safety perceptions and expectations: **they do not expect landowners to provide for their recreational safety**
 - The survey found 100% agreement to the proposition that it would **not be someone else's fault** if they slipped, fell, got lost or injured themselves.
 - **Most of the walkers saw 'structures' (paths, stiles etc) as part of the natural environment** and did not see them as having any greater degree of 'landowner responsibility' than (truly) natural features of the environment they were walking in.

Understanding abandoned quarries

Now: *quarries & occupiers' liability*

- **Research questions:**
 - *How do quarry managers think and act about recreational access to their active or disused quarries?*
 - *What factors determine difference in attitude?*
 - *How is this disposition learnt and circulated?*



Conclusion



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