

The duties of occupiers to trespassers under the Occupiers' Liability Act 1984

Being an occupier of a premises brings with it a host of responsibilities, one of which is ensuring the safety of those who come onto the premises. While it's clear that lawful visitors are owed a duty of care, what about those who enter without permission? The Occupiers' Liability Act 1984 ("the 1984 Act") addresses this question, outlining the specific duties occupiers have towards trespassers.

The 1984 Act was introduced to fill the gaps left by its predecessor, the Occupiers' Liability Act 1957, which primarily addresses the responsibilities towards lawful visitors. The 1984 Act acknowledges that while trespassers do not have permission to be on the premises, they still deserve a basic level of protection against harm.

Under the 1984 Act, occupiers have a duty to take reasonable care to ensure that trespassers are not injured by dangers on their premises if the following conditions are met:

1. **Awareness of danger:** the occupier must be aware of the danger or have reasonable grounds to suspect it exists.
2. **Expectation of trespassers:** the occupier should know or reasonably anticipate that trespassers might come into the vicinity of the hazard.
3. **Reasonable risk:** the risk posed by the danger is one that the trespasser can reasonably expect some protection. The court here has distinguished between the classes of trespassers with innocent trespassers (such as children or unexpecting ramblers) being reasonably expected to be offered protection, whilst a burglar or deliberate thrill seeker may not.

Consider a set of disused steps on an occupier's premises. If the occupier knows (or should know) the steps are rotten and defective, and they are aware that adolescents often frequent the steps after hours, the owner must take reasonable actions to mitigate the risk. This could involve repairing the steps, fencing off the steps to prevent access, or placing clear warning signs about the potential dangers. Conversely, if the occupier has no reason to expect trespassers or is unaware of the danger, the duty of care may not apply.

The 1984 Act stresses that the measures taken by occupiers must be reasonable. This means balancing the effort and cost required to address a hazard against the potential severity and likelihood of injury. For example, putting up warning signs or barriers to warn of the danger the steps might pose might be considered reasonable, while installing brand-new steps might not.

It is important to note that occupiers are not required to protect trespassers against obvious risks.¹ However, it is worth bearing in mind that what might be obvious to an adult might be less obvious to children.



Although the duty of care for trespassers is less stringent than for lawful visitors, occupiers must still act reasonably to prevent foreseeable injuries. Practical steps might include:

- Installing notices/signage (such as "DANGER, KEEP OUT!") to warn off trespassers.
- Providing clear instructions to visitors (particularly children/younger adults) about where they are permitted to go. Lawful visitors can quickly become trespassers if they wander into an area of the premises that they are not permitted to be in and where there may be dangers.
- Take reasonable steps to remove hazards and/or opportunity. Premises checks to identify and maintain hazards is good practice to protect both lawful visitors and trespassers. Safely stowing away/locking up activities equipment (such as canoeing equipment, or high ropes courses) can discourage inquisitive children or thrill seekers.

Whether 'reasonable steps' have been taken will depend on 1) the seriousness of the danger, and 2) the type of trespasser that is likely to come. Case law has held that fencing off a potentially dangerous lake in case adults swam in it was not required. However, if the occupier can reasonably anticipate the presence of children, the occupier is likely to be expected to take more active steps, such as erecting/maintaining fences.

As always, each case is determined on its own facts and what is considered reasonable in one circumstance may not be reasonable in others. It is a question of balance and degree: the courts will consider how severe the danger is (e.g. is it a danger of significant injury and/or death), and how inconvenient it would be for the occupier to abate it. As above, greater (and possibly more expensive) steps are likely to be required if the danger is particularly severe and/or the occupier can reasonably expect wandering children/young adults.



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¹ Examples of obvious risks that have been decided by the court include 1) diving into a pond in a country park (Tomlinson v Congleton BC [2003] UKHL 47), 2) attempting to slide down a banister of a staircase (Geary v JD Weatherspoon Plc [2011] EWHC 1506 (QB)), and 3) falling

off the edge of an ornamental bridge with low parapets (Edwards v Sutton LBC [2016] EWCA Civ 1005). It is worth noting that all these cases were brought by adults (and not children).