



Advisory

The information in this advisory is a general summary and is intended to highlight some issues that developers will wish to review with their professional advisors regarding the risks attaching to their particular development. No responsibility for loss or damage or injury occasioned to any person acting, or, refraining from acting as a result of the information can be accepted by The Blueway Partnership.

OCCUPIER'S LIABILITY

Landowners and occupiers of land have certain responsibilities or a "duty of care" to people who come on to their land. In Northern Ireland, two pieces of legislation address this duty of care:

1. **The Occupiers' Liability Act (Northern Ireland) 1957** provides information on an occupier's duty of care towards "visitors" to the land
2. **The Occupiers' Liability (Northern Ireland) Order 1987** provides information on the extent of the duty of care towards "non-visitors" to that land.

Both pieces of legislation refer solely to the use of land and do not provide any mention of water that may be adjacent to that land.

The 1957 Act highlights that if the access to the land has been granted through provisions in the 1983 Access to the Countryside Order any users of the Blueways will not be classified as visitors. Also, the 1987 Act highlights that no duty is owed to a user if the access is on a Public Right of Way (effectively defined as a road).

Furthermore, both pieces of legislation highlight that no duty is owed to any person in respect of risks willingly accepted as his by that person, however the question whether a risk was so accepted will be decided on the same principles as in other cases in which one person owes a duty of care to another. This is often known as the "Volenti" principle and comes from the Latin phrase "Volenti Non Fit Injuria" which literally means "to one who volunteers no harm is done." It is sometimes known as the "voluntary assumption of risk".

WATER ACTIVITIES

When it comes to water recreation, activities such as canoeing, open water swimming, stand up paddle boarding etc. it is clear that the participant who voluntarily decides to participate in such activities should be cognisant of the inherent risks.

Where the developer has "invited" the participant to come and use the water – the inherent risks with that section of water should be obvious and also made very clear so that the participant can make an informed choice. Blueways are generally designed to be easily navigated stretches of water that have minimal current and exposure to wind and fetch.

When a participant engages the service of an activity provider to provide guidance, instruction and safety – then clearly that provider has responsibilities and a duty of care under the health and safety at work legislation. However, independent participants use the water at their own risk.

LAND ACTIVITIES

If an access agreement for a trail has been developed via the 1983 Access to the Countryside Order then the user cannot be classed as a visitor and so the duty of care would be lower.

However, it is recognised that most access agreements now in Northern Ireland have been developed as permissive path agreements through the powers of councils under **The Recreation and Youth Service (Northern Ireland) Order 1986**.

Through a permissive path agreement, the councils may take on the liability and associated management and maintenance and effectively become the occupier. However, in this instance the duty of care would revert to the duty owed under the 1957 Act.

The duty of care owed to a user that is classed as a "visitor" is set out in section 2 of the 1957 Act and states that:

“ a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there. ”

Understanding this important principle of taking a reasonable approach has been the focus of work of the Visitor Safety Group, which is a consortium of both public and third sector organisations across the UK and Ireland.

The group works collaboratively to help to create safe access to the countryside in ways that do not spoil the landscape and heritage, or lessen the visitor's sense of exploration and adventure. As such, they have produced excellent guiding principles and a publication focused on **Managing Visitor Safety in the Countryside**.

The 1957 Act further goes on to describe the importance of information (warnings) and the management of any construction, which includes trails and stiles etc.

It is therefore important that recognised standards are employed when developing trails and infrastructure.

The 1987 Act highlights the importance of the knowledge of the occupier in relation to the dangers associated with the premises, and the protections the occupier should reasonably be expected to provide.

The duty owed by occupiers to recreational users is an area that has been litigated frequently, and to date there are no known successful court cases under either pieces of legislation with respect to recreational users. However, there have been a small number of out of court and often undisclosed insurance claims and settlements. With respect to the numbers of people accessing the outdoors for sport and physical recreation these represent a miniscule percentage.

CONCLUSION

As both the social utility and the dangers inherent in recreational water-based activities are generally clear and obvious, recreational users will be reasonably expected to take particular care in that context. The duty of care imposed on occupiers in respect of recreational users in the context of the Blueways projects may therefore be perceived as not being overly onerous.

In addition, the extent of protections that an occupier can reasonably be expected to put in place on the Blueways are limited, given the scope and extent of the waterways involved.

However, of course, this will be subject to each managed facility/Blueway undertaking its own risk assessment and risk control exercise to ascertain individual preventative and protective measures.

All Blueways developers should obtain independent legal/insurance advice in relation to their own developments. Furthermore, it is essential that appropriate warnings and water safety advices should be included and prominently featured in promotional materials, both printed and those available online and at each trailhead/entry way to the Blueways to minimise the risk of a legal challenge.

RECOMMENDED GENERAL WORDING FOR SIGNAGE

By entering the Blueway, users acknowledge the water safety risks associated with water activities and are responsible for their own safety. No responsibility is accepted and visitors use the facilities and water entirely at their own risk.

USERS SHOULD:

- Check the weather forecast
- Always look for and heed warning and guidance signs
- Always wear a lifejacket or buoyancy aid
- Stay parallel to the shore and avoid moving away from it where possible and/or appropriate
- Avoid drifting into currents and entering fast flowing water
- Understand that water levels can change and keep watch for underwater hazards
- Always be aware of other users, particularly boats and other crafts
- Wear appropriate clothing and exit the water as soon as you feel cold
- Never consume alcohol before or while in/on the water
- Be accompanied by another experienced person when in/on the water
- Plan your activity ahead of time, particularly with regard to the route, distance, and difficulty
- Bring a copy of a map of the Blueway where appropriate
- Inform someone where you're going and when you expect to return
- Always exit the Blueway at a safe point
- Take particular caution at weirs/flood gates
- Follow the principles of Leave No Trace

EMERGENCY TELEPHONE NUMBERS

In the unlikely event of an Emergency use the following numbers:

Police and Ambulance 999 (all phones) or 112 (all phones) and ask for the Coast Guard.

Note that mobile phone reception is unreliable in many areas so an alternative communication device such as a radio or a means of attracting attention such as a torch, flare or distress signal is recommended.

THE ABOVE IS NOT AN EXHAUSTIVE LIST OF RECOMMENDATIONS FOR SIGNAGE AND WARNINGS AND SHOULD BE ADDED TO, TAKING INTO ACCOUNT THE LOCATION AND PARTICULAR HAZARDS.



THE BLUEWAY PARTNERSHIP COMPRISES: