

Occupiers' liability, duty of care and obvious risks

In recent years, there have been a host of cases in which injured claimants have pursued damages claims relating to the condition of premises and/or the activities undertaken on those premises. Where the alleged danger arises out of the state of the premises the claim is ordinarily brought under the Occupiers Liability Act 1957 (OLA 1957). Where it is the activity rather than the premises that is the source of the danger the claim will generally be in negligence. In both cases the duty of the defendant is one of reasonable care. Defendants have had notable successes in arguing that a risk was inherent and obvious such that it was not under a duty to guard or warn against it. In the table below we summarise the significant case law in this field of work to include some important recent decisions:

Case	Detail	OLA or negligence	Reason/comment
Tomlinson v Congleton [2003] UKHL	C injured diving into a shallow lake in D's park. Claim dismissed.	OLA (1984) and N	There was no risk to C from the state of the premises or from anything done or omitted to be done on the premises and D therefore owed no duty of care under the Act. C's actions were undertaken voluntarily and carried inherent and obvious risks that D was not required to warn him against.
Poppleton v Trustees of Portsmouth [2008] EWCA	C was seriously injured when he tried to jump from one wall to another at D's indoor climbing premises. Claim dismissed.	N	There being inherent and obvious risks in the activity which C was voluntarily undertaking, D was not required to prevent him from undertaking it. The law did not require D as an occupier of land to prevent him from doing what he did to train him or supervise him while he did it.
Tacagni v Cornwall CC [2013] EWCA	C fell after deviating from a raised pathway adjacent to the road which she had decided to walk along in the dark. Claim dismissed.	OLA	The risk was not one what D ought to have been aware of. Further, C's actions in using the path at night and without a torch were not those to be expected of an ordinary visitor under s.2(3) of OLA.
Risk v Rose Bruford College [2013] EWHC 3869 (QB)	C jumped head-first into a small inflatable pool suffering serious injury. Claim dismissed.	OLA and N	The risk C took was obvious and he acted out of genuine and informed choice. He was not under the control of D and there was no duty to protect him from an obvious risk which he created himself.
AB v Pro-Nation Ltd [2016] EWHC 1022 (QB)	D was liable to C who fell when exiting the premises of one of its licensed pubs.	OLA	There was no adequate handrail for the staircase which had been built in 2010 and did not comply with the standard of that time. Having regard to the increased risk of falling when users had been drinking D was in breach of its duty under s.2 OLA.

Case	Detail	OLA or negligence	Reason/comment
Taylor v English Heritage [2016] EWCA	D was liable to a C who fell down a sheer drop after using an informal pathway (50% contributory negligence).	OLA	The sheer drop was not an obvious danger to visitors and the risk of serious injury was significant. There was therefore a duty on D as occupier to warn against it. Such warning signs would have influenced C's behaviour.
Edwards v Sutton LBC [2016] EWCA	C fell over the low parapet of an ornamental bridge in a park in the course of pushing his bike across the bridge. Claim dismissed.	OLA	The width of the bridge, the height of the parapets and the potential for injury was obvious to the claimant. The extent of the risk had to be properly considered. Fitting railings would have substantially altered the bridge's character and was out of proportion to the remote risk.
Debell v Rochester Cathedral [2016] EWCA	C tripped and fell over a small lump of concrete protruding from the base of a traffic bollard on cathedral grounds. Claim dismissed.	OLA	The defect was not a danger which D was required to address. It was a small piece of concrete which could not be said to pose a real danger to pedestrians.
Maylin v Dacorum Sports Trust [2017] EWHC 378 (QB)	C fell from a bouldering wall at D's climbing centre. Despite landing on the matting below she suffered a significant injury. Claim dismissed.	N	The risks in the activity were inherent and obvious and D was not under a duty to train, supervise or warn against them (per <i>Poppleton</i>).
Liddle v Bristol City Council [2018] EWHC 3673 (QB)	Deceased lost control of his bicycle due to rail tracks on a quayside and wharf, falling into the harbour below. Claim dismissed.	OLA	There were adequate warning signs to alert cyclists to the presence of the tracks and the availability of an alternative route. There had been only one previous incident and the risk was low. The drop was an obvious danger and there was no duty to erect barriers.

This update does not attempt to provide a full analysis of those matters with which it deals and is provided for general information purposes only. This update is not intended to constitute legal advice and should not be treated as a substitute for legal advice. Weightmans accepts no responsibility for any loss, which may arise from reliance on the information in this update. The copyright in this update is owned by Weightmans © 2018

Data Protection

Subject to our compliance with the General Data Protection Regulation ((EU) 2016/679) (GDPR) and the Data Protection Act 2018, your name may be retained on our marketing database. The database enables us to select contacts to receive a variety of marketing materials including our legal update service, newsletters and invites to seminars and events. It details your name, address, telephone, fax, e-mail, website, mailing requirements and other comments if any. Please ensure you update our marketing team with any changes to your [preferences](#), including if you wish to [unsubscribe](#) from receiving all marketing communications. For details of your rights in respect of the information that we hold about you, please see our [Privacy Notice](#). For other queries, you should contact either our Data Manager, Andrea.Bridson@weightmans.com or DPOContact@weightmans.com, or write to us by letter addressed to either Andrea Bridson or DPO Contact at 100 Old Hall Street Liverpool L3 9QJ.