

## **Risky activities, climbing-wall case**

*You do not have to stop adults from willingly undertaking risky activities on your property. Nor do you have a duty to ascertain their level of competence, train or supervise them.*

In February 2002, Gary Poppleton, a fit young man, went bouldering, (low-level climbing without ropes) in an activity centre run by the charity Trustees of the Portsmouth Youth Activities Committee.

He had been to the centre before, but was a relatively inexperienced climber. He was with a group of friends, some of whom were more experienced. He was not given any instruction or asked about his ability as a climber. Imitating other climbers, Mr Poppleton attempted to jump from the climbing wall and grab a girder. However he failed in his attempt and fell onto the matting below. He landed awkwardly on his head, sustaining severe spinal injuries that left him tetraplegic.

There were rules on a board outside the room prohibiting jumping off walls but Mr Poppleton's attention had not been drawn to them. He brought a claim for damages, alleging that the centre had breached s2 of the Occupiers' Liability Act 1957 in that it failed to provide sufficient supervision, failed to warn him that he should not jump and failed to warn him that the presence of the matting did not make it safe for him to do so.

In the initial hearing, the court found that there had been no breach of the Occupiers' Liability Act 1957 as there was nothing wrong with the premises. Also, it was not reasonable to impose a duty of care to assess competency or to provide training or supervision before allowing adults to use the facility. However there was a duty at common law to inform the climbers about the dangers of falling onto the matting, so that they were not misled into believing that it was safe to fall off the wall as there was thick safety matting in place. The charity was also criticised for failing to have a proper risk assessment in place.

The Judge therefore held that the centre was 25% to blame. Mr Poppleton, however, was 75% to blame, as he had carried out a dangerous manoeuvre beyond his capabilities.

The charity appealed against the decision and Mr Poppleton cross-appealed on the finding of his contributory negligence.

The Court of Appeal found there was no relevant hidden or inherent danger in the safety matting. Judge Lord Justice May ruled that "it was obvious that a climber who fell awkwardly might be injured and there was no duty to explain the obvious to a consenting adult who does not ask for advice or supervision and when none is offered".

"Adults who choose to engage in physical activities, which obviously give rise to a degree of unavoidable risk, may find that they have no means of recompense if the risk materialises so that they are injured."

In reaching its verdict in favour of the charity, the Court of Appeal considered *Tomlinson v Congleton Borough Council* [2003] UKHL 47 and appears to have extended its application.

Tomlinson established that "it would 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 chose to undertake." In such cases (involving adults of full capacity voluntarily and without pressure or inducement engaging in activities which had an obvious and inherent risk) a duty would only arise where there was no genuine or informed choice or (added by the Court of Appeal) where the

occupier had in some relevant way assumed responsibility for safety. Nor are the occupiers under a duty to train or supervise those adults who voluntarily undertake such activities.

The Court of Appeal confirmed that if the law were to require training or supervision of adults using a climbing wall, then it would equally be required for a multitude of other common place leisure activities that carry a degree of obvious inherent risk. The example of bathing in the sea was mentioned and an analogy was drawn to the hiring of skis or a mountain bike on which someone later got injured.

The fact that Mr Poppleton was charged an entry fee to use the climbing wall made no difference to the result. It also made no difference that the rules for use of the climbing wall could have been more prominently displayed.

It is, however, important to note that the decision has limitations. You might well be liable if you could be said to have assumed responsibility, for example by providing training or supervision; if the people undertaking the activity are not adults of full capacity (so the decision would not apply to children); or where the involvement is not wholly voluntary. It would also not prevent liability where the occupier of the land or premises was at fault, for example in providing defective equipment.

**Trustees of the Portsmouth Youth Activities Committee (A Charity) v Poppleton [2008] EWCA Civ 646**

This case law entry was written by VSCG Administrator and was published in October 2009

Copyright © 2009 Visitor Safety in the Countryside Group

You may reproduce any part of this article as long as you acknowledge the Visitor Safety in the Countryside Group as the source, giving the web address [www.vscg.co.uk](http://www.vscg.co.uk)