

TRESPASS

What Rights of Way Users Can Do...

- The law confers rights to the public to "pass and repass" along rights of way. In doing this, trespass is not committed against the landowner.
- You may also do things regarded as "reasonably incidental" while on a right of way, such as stop for a rest.

What Users Cannot Do...

- Stray from the right of way. If this happens, trespass is committed against the landowner.
- Use the right of way for purposes other than those mentioned above or those for which it is intended.
 - i.e. a cyclist on a footpath (or person carrying or pushing a cycle on a footpath) commits trespass
 - i.e. a person who drives a vehicle along a footpath or bridleway creates trespass
 - *(N.B. these two cases may also constitute the common law criminal offence of public nuisance if the use "prevents the convenient use of the way by passengers" - e.g. causing walkers to have to jump out of the way or churning up the path*

What Landowners Can Do If Trespass Occurs...

- This is a civil wrong (but not a criminal offence).
 - *(N.B. Therefore a notice stating that "Trespassers will be prosecuted" cannot normally be carried out)*
- Civil court (county court or High Court) proceedings following such trespass will therefore seek to compensate the landowner, rather than punish the trespasser.
- In such trespass cases, the law gives the landowner the ability to "eject" the trespasser from his/her land or to seek an injunction against repeat offenders.
- *(However, if more than reasonable force is used to eject a trespasser, the person doing so will commit both a civil wrong and a criminal offence.)*
- Damages sought against a trespasser are assessed so as to compensate for any damage done. If none occurred, a token amount may be awarded.

Liabilities...

- If injury occurs to a user of a right of way when he/she is **off** a right of way without the landowner's permission (express or implied), then he/she is a trespasser and is liable accordingly.

- If injury occurs to a user who has deviated from the public right of way with the landowner's permission or due to an obstruction caused by the landowner, liability is governed by the Occupier's Liability Act 1957. Under this, the user is considered a 'visitor' (a person who is on the premises by the express or implied permission of the landowner) and therefore that user's liability rests with the landowner - "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."
- If injury is caused to a user of a right of way by a failure to maintain the way in a proper state of repair, the Highway Authority will be liable.
- If injury is caused to a user from an obstruction caused by the landowner, for example, then that landowner will be liable.
- If injury is caused to a user by the condition of a stile or gate, the landowner is likely to be liable:
 - Highways Act 1980 - Section 146 - imposes a duty on the landowner to maintain any 'stile, gate or other similar structure' across a right of way in a safe condition.
 - Occupier's Liability Act 1957 - as a stile or gate on a highway is not considered to be part of that way, liability concerning it rests with the landowner.

Exceptions to the rules...

- Certain cases exist where bye-laws may make trespass a criminal offence. These may include land owned by the Ministry of Defence or RailTrack, for example.

Designated Access Land

- One way that landowners can reduce their liability towards people on their land is to dedicate their land for public access under the new CROW Act 2000.
- Section 13 of the CROW Act amends the Occupier's Liability Act 1957 so that the liability of landowners to those exercising their access rights is lowered to the same level as owed to trespassers.
- Furthermore, landowners would no longer owe liability to risks arising from natural landscape features such as trees, rivers, streams, ditches or ponds or man-made obstacles such as walls, fences or gates.

Further Information / Sources

Garner, J.F. & Jones, B.L. (1997) *Countryside law*, 3rd Edition, Shaw & Sons Ltd, Kent.

Riddall, J. & Trevelyan, J. (2001) *Rights of way, a guide to law and practice*, 3rd Edition, Open Spaces Society and Ramblers' Association.