



Liability and Health & Safety

Commons Factsheet No. 17

Liability and Health & Safety

Health and safety considerations can present significant implications for the owner, rights holders and graziers, volunteers, the public and users of the common or green and any contractors taken on to do specific work. However, heavy constraints are not always necessary, and a common-sense and proportionate approach are the key ingredients of a workable health and safety strategy for your common or green. This Factsheet does not offer legal advice, but aims to give an outline of the subject as a basic understanding prior to finding out more. It is best to go to the official sources for the facts, and some key links are provided.

The distinction between Liability and Health & Safety

Liability

Visiting some parts of the countryside, such as the coast, lakes or ponds, steep hills or cliffs all involve some inherent risk. However, it's not practical, and probably not desirable, to eliminate such risk totally, for example through barriers.

On registered common land there is a right of access for the purposes of open-air recreation granted through the Countryside and Rights of

Way (CRoW) Act 2000. Section 13 of this Act specifically reduces the liability that occupiers (e.g. the landowner or tenant) normally face (through the Occupiers' Liability Act of 1984).

This reduced liability applies specifically to people exercising their access rights under the CRoW Act (different provisions apply to people you invite or expressly permit to be on the land and those using rights of way).

The act does not exclude liability for accident or injury as a result of activities being undertaken on the land, such as felling, cutting, spraying or burning or from man-made structures such as stiles or bridges where these are faulty or unsafe. Open access and public liability (see Sources of further information) is a useful reference.

Health and Safety

Even when the landowner has no duty concerning the (largely) natural risks mentioned above, they will be concerned to ensure that they are aware of such matters, and take reasonable steps to ensure that such risks are managed. Alongside this, they need to be aware of their wider duty of care, such

The CRoW Act states that an occupier owes no duty to any person exercising their access rights in respect of a risk from:

- Any natural feature of the landscape (including any tree, shrub or plant)
- Any river, stream, ditch or pond, (whether natural or not)
- People passing over, under or through any wall, fence or gate, except by proper use of a gate or stile.

as towards those who are not exercising their access rights under the CRoW Act, or hazards arising from human-made features and works undertaken on the land.

Risk assessment

This is a rather grand term for a process that is in fact very straightforward and quite easy to apply. It simply means thinking about all of the hazards that might be relevant to your site, the group or individual that may be at risk, and the steps that need to be taken to avoid or minimise the hazard. The process needs to be recorded, and kept up-to-date with a periodic review to ensure everything is still current and the avoidance procedures are still appropriate. There are examples of risk assessment on the HSE website (see *Sources of further information* below).

Hazards for a site can be specific to different users or visitors and vary with the season and there will be risks that apply only when a certain task is underway – tree work or use of chemicals for instance. Similarly, there will be risks that are the responsibility of the owner or manager of the common and those that are tied very much to a specific contractor. For example, someone employed to carry out bracken spraying must be able to show that they are not at risk themselves, and have all the necessary training and certification in place, as well as having adopted measures to protect other common users from risk.

Professional contractors can be expected to have full risk assessments for their work. Volunteers may not be so familiar with the concept of risk assessment but must be catered for just as responsibly. If you have a regular band of volunteers who record wildlife or do varied jobs as 'Friends', you could engage them in helping with listing all the

hazards and working out suitable avoidance measures. Those who actually do the job and encounter the situation regularly will know best what hazards may be applicable. Nevertheless, a fresh pair of eyes to check the site or circumstance is essential, just so that familiarity does not allow a risk to be overlooked.

The measures you can take to avoid a hazard might be achieved by separating the user from the risk, such as keeping walkers temporarily away from a tree being dealt with by tree surgeons. Alternatively, a hazard can be avoided by managing the risk itself – for instance uneven ground or a shaky boardwalk can be made safe by repair or replacement.

Responsibilities

Site owners

Except as listed above under Liability, the site owner has a duty of care towards those using the land. However, trees with overhanging branches or dead branches present a particular dilemma. Trees are important features in the landscape, and old trees, especially those with deadwood, are extremely valuable habitat for insects, fungi and nesting birds. The owner of the land has no duty concerning the risks arising from trees, where people are exercising a right of access under the CRoW Act. In certain circumstances however, where risks are unacceptable, or where trees overhang roads or rights of way, the owner of the common may consider that works are necessary.

For commissioned work, the owner or his/her agent must take all necessary steps to protect users from any risk associated with, for instance, contractors working on site. In the case of work on trees, Managing health



Many of our scarcest species of wildlife are associated with ancient trees.

and safety in forestry on the HSE website is recommended reading. The guide *Veteran Trees: A guide to risks and responsibilities* is also useful for those contemplating work.

A notice warning visitors of any new circumstance that may apply on the common may be useful, for example where scrub control is undertaken or grazing animals are being introduced. This should include advice on how to avoid any risk, for instance in the case of dog walkers on a common with cattle grazing (this topic is covered in more detail in *FS11 Grazing our common*).

In exceptional circumstances it may be necessary to close off part of a common where works are being undertaken. Temporarily taping off an area, or staffing entrances, may be sufficient. However, where the risks merit it, you can apply to exclude access under the CROW Act (see *Sources of further information*).

Contractors

Any contractor engaged to carry out works should have evidence of adequate training and safety awareness, including their own



Contractors must have suitable training, certification and insurance.

risk assessment for the task. Examples would include use of a chain saw or herbicide application. Such contractors should also carry the appropriate level of public liability insurance.

It is the contractor's responsibility to secure all this certification, and the landowner's responsibility (or yours if site management is delegated to you from the owner) to be satisfied that this is all in place before the contractor is employed.

Volunteers

It is also your, or the owner's, responsibility to ensure that any volunteers who work on the common are properly trained for the job they do. Whilst volunteers may not usually carry out jobs involving power tools or chemicals, they might often use hand tools such as bow saws or assist with livestock or engage with the public. All of these tasks carry their own risks.

Both for their own security and that of other users of the common, you should ensure that the volunteers are adequately trained to do the job safely. Every time that a new volunteer is



A volunteer workparty at Lankham Bottom
(J. Davis © Butterfly Conservation)

engaged, for instance cutting scrub, a briefing session should be given by a competent person, on the safe use of the procedures or tools.

It is also important to conduct a briefing session before volunteers start any job even (or especially!) if the task may seem familiar. This should include activities like having a bonfire, since a practice adopted by an individual in their own garden may have different implications on a site open to the public. Emergency procedures, including use of mobile telephones with contact numbers, should be established and understood by work party leaders.

If there are individuals who are happy to work alone on the common, either with tools or perhaps checking livestock or infrastructure or recording wildlife, you should encourage them to operate a system of checking-in with a relative or buddy to confirm their safety when they finish their stint.

There should be a procedure to be followed if there is any cause for alarm, if for instance the volunteer appears to be out unduly long.



Guided walks - preparing a generic and easily updateable risk assessment is a good idea.

Tools and equipment

In addition to being used safely, tools or chemicals must be safely stored with no risk to the user or anyone else. The storage, as well as the use, of chemicals requires particular attention and falls under the regulations of the Control of Substances Hazardous to Health (COSHH).

Guided walks and courses

If you lead guided walks or run outdoor courses on your common or green it is a good idea to prepare a generic risk assessment for this activity and keep it up to date. Simple things such as advising participants to wear the right clothes and footwear, to take care crossing roads, to look after their eyes if bending down to look at plants or to avoid ditches are the sort of things that are needed.

Recording incidents

Accidents may happen on a common or green just as they can anywhere in the countryside; for example a member of the public slipping on a muddy path. They can also happen

during management activities, for example a volunteer hurting their hand on a bow-saw. By far the majority of these types of incidents will not need to be reported, but it is good practice to record them - HSE can supply an accident book for just this purpose.

This shows both that the managers of the common take accident matters seriously and can also lead to changes in procedures or structures that will reduce minor accidents. Should there be a more serious accident, the HSE will ask to see risk assessments (if the accident results from work being carried out by contractors or volunteers) and the accident book.

If there are paid staff working on the site, there are important procedures for reporting accidents that are legally required. These are the responsibility of the employer and all the details are on the HSE website.

Training

Developing a skills base is one of the advantages and attractions of voluntary work, so training is a benefit as well as a necessity for health and safety reasons.

Volunteers who are interested in using equipment such as a chain saw or in applying chemicals must of course be properly trained and have passed the necessary tests. They must also be equipped with the appropriate safety gear for the job.

If you need to arrange for, or encourage, volunteers who are keen to work on your common to be trained, there are many formal training courses available.

The British Trust for Conservation Volunteers (BTCV) runs a wide programme of training and also publishes a series of handbooks on various habitat management topics (including Care of Tools), available on their website.

The LANTRA (the Sector Skills Council for environmental and land-based industries) website is also a good place to look for

Things to think about if you have livestock grazing your common or green:

- Choose your livestock with care to ensure they will be suitable for a site with public access (see *FS11 Grazing your common*)
- The owner of the livestock should insure against liability to third parties for loss, injury or damage arising in relation to the grazing livestock
- Be informed about possible zoonoses (diseases of farm animals that can also affect humans) e.g. HSE Common Zoonoses in Agriculture
- Under the Animals Act 1971 where damage is caused by animals straying from unfenced land to a highway, the person who placed them on the land is not regarded as having committed a breach of the duty to take care if the land is common land.
- Consider a training day for dog walkers (see *FS4 Who has an interest in the common?*)

certified courses. Another good source of training for certification and the safe use of tools and development of skills is local agricultural colleges, most of which run both short courses or longer programmes, and can be found on the internet.

The Grazing Advice Partnership also runs courses in stock checking for volunteers. Volunteers may also be able to train with an organisation associated with the common or green such as a local county Wildlife Trust.

First aid is another essential skill, so ensure that several volunteers are trained and keep their certification up to date. At least one person on each work party should be competent to use first aid skills.

Make sure that if any activities are going on for which you have a responsibility, enough of the appropriate sort of first aid kits are available.



A stock checkers' training course

Handy tips:

- Engage volunteers in identifying hazards – and avoidance measures
- Keep up-to-date risk assessments for projects you do or supervise
- Ensure everyone who works on the common is trained/briefed for the task
- Apply a suitable lone working procedure
- Keep an accident book
- Advise visitors to the common of current works or new hazards
- Ensure any contractors have appropriate qualification and equipment for their job
- Check out the HSE website
- Keep a sense of proportion!

Sources of further information

British Trust for Conservation Volunteers (for information on training courses)

- www2.btcv.org.uk

Grazing Advice Partnership (provide training for stock checkers):

- www.grazingadvicepartnership.org.uk

Health and Safety Executive (for advice and publications):

- www.hse.gov.uk

Land managers guidance pack (to open access) and related products:

- www.naturalengland.org.uk/ourwork/enjoying/places/openaccess/default.aspx

LANTRA (to search for certified training courses in your area):

- www.lantra.co.uk

Veteran Trees: A guide to risks and responsibility. Available from the Natural England website publications section:

- www.naturalengland.org.uk

- Open access helpline: 0845 100 3298.

Credits

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