MANAGING VISITOR SAFETY IN THE HISTORIC BUILT ENVIRONMENT

principles & practice
We believe that it is possible to protect and enhance our historic built environment, encourage public access and achieve levels of risk that are acceptable to society.
The VSCG Historic Built Environment Subgroup

The Visitor Safety in the Countryside Group (VSCG) was created in 1997 to develop a consistent approach tovisitor safety management. Our members are committed to protecting and enhancing the natural and historic built environment whilst encouraging public access.

The group includes organisations that own and manage land and property, with day-to-day experience of visitor management, as well as national policymakers and specialist safety advisors. We work together in order to:

- Identify and share good practice
- Promote the application of consistent management principles
- Develop a model approach to risk assessment that incorporates valuing benefits
- Encourage consistency in the choice and application of risk control measures
- Seek a balanced and pragmatic approach to dealing with the many varied factors that affect visitor safety management
- Produce sound interpretation of legislative requirements and court decisions

The guiding principles have been adapted for use by the National Water Safety Forum and the National Tree Safety Group. Now, in this book, we show how the principles can be specifically applied in the historic built environment.

Our fundamental aim is to identify and promote ways to manage visitor safety that sustain the heritage significance and value of historic places. The advice will help anyone who invites or allows members of the public into:

- Castles
- Cathedrals
- Estates
- Churches
- Stately homes
- Bridges and aqueducts
- Landscape gardens
- Parks
- Follies
- Earthworks
- Industrial heritage sites
- Visitor centres in historic places

These are some of the more common examples. The historic built environment might also include other properties such as historic schools, theatres and cinemas; buildings or sites associated with transport heritage; military buildings, battlefields and war memorials; graveyards and mausoleums; agricultural buildings; piers and coastal heritage buildings and structures.

The book does not advise on occupational health and safety in the workplace or the requirements of equality and discrimination legislation, as these are well covered elsewhere.

Our website, www.vscg.co.uk, features case studies and gives examples of good practice. We welcome suggestions or contributions from individuals and organisations involved in visitor risk management.

The historic built environment is defined as buildings, monuments, archaeological remains, other man-made structures and designed parks and gardens that are historic places of significance.

VSCG, Historic Built Environment Subgroup
INTRODUCTION

Considering that every year well over fifty million visits are made to our historic properties in Great Britain and Ireland there are remarkably few serious accidents. In contrast there are many benefits. Time spent on recreation, exploration and learning makes a major contribution to people’s health and well-being.

Although few accidents do occur we want to ensure that we have taken all reasonable steps to avoid them. We also need to be able to demonstrate this is the case if we are faced with a claim or investigation.

Deciding what precautions are reasonable to take can be very tricky. We need to be careful not to spoil the things that attracted people to visit in the first place.

For some, exposure to risk may be an important part of their experience. Why shouldn’t a visitor to a 13th century castle be able to experience the exhilaration of walking around the original walls and battlements, with unguarded drops and no 21st century handrails? Is this so different from allowing a mountain biker or rock climber access to extreme routes?

This book is about how to balance such risks and benefits. We believe that by following its advice it is possible to:

- achieve acceptable levels of safety using risk controls that do not harm the heritage significance and value to society of historic places
- promote enjoyable access to historic places
- meet our moral and legal obligations
- use risk control solutions that comply with statutory requirements
- achieve cost-effective visitor safety management
- reduce costs, including those from claims

PRINCIPLES

The first two chapters set out the principles for visitor safety management.

PRACTICE

Chapters 3 and 4 explain how to go about creating a visitor safety plan and carry out risk assessments. The framework will be familiar to readers with a background in occupational safety, or knowledge of the Health and Safety Executive’s guidance “Managing for health and safety”. However, our focus is the safety of visitors, not employees. We therefore look at how the experience, needs and expectations of our visitors influence safety management decisions.

Chapter 5 shows how providing visitors with good information can be an important way to control risk. Chapters 6 and 7 deal with investigating incidents and planning for emergencies.

SUPPORTING INFORMATION

Chapter 8 includes an assessment of how the law applies to visitor safety together with an outline of relevant cases.

MORAL

First and foremost we want our visitors to return home safe, happy and satisfied with their experiences. We have a moral obligation to consider their safety, and protect them from unnecessary or unreasonable risk.

We also need to ensure that visitors do not feel overprotected. We must consider their right to willingly accept the risks that might come with the benefits they are seeking.

LEGAL

We have legal duties to ensure the safety of those we don’t employ but who are affected by our work – our visitors. These duties are explored in more detail in Chapter 8, The Law & Visitor Safety.

FINANCIAL

People affected by accidents often look for someone to blame and want to claim compensation. We want to be able to defend unreasonable claims.

There is often a clamour for something to be done other than an accident. We need to be in a strong position to resist the introduction of inappropriate or excessive safety measures. We can then avoid creating unwelcome precedents and incurring unnecessary costs.

HSE supports the VSCG’s commitment to promoting a sensible and proportionate approach to managing visitor safety in the historic built environment. This guidance provides a valuable framework for managing risks to visitors which is sensitive to the historic value of the properties and landscape and does not unduly restrict public access.

Health and Safety Executive
Visitor safety management is about providing overall benefit to society and individuals by balancing benefits and risks. It is not about creating a totally risk free society or stopping important recreational and learning activities.

This chapter explores how risk management can affect both risks and benefits. We consider how perceptions of risk and risk management affect not only owners and managers of historic buildings, land and property, but also visitors and society at large.

We examine how individual perception of risks and benefits varies and compare the risk of historic places with risk from other activities.

Our fundamental aim is to identify and promote ways to manage visitor safety that sustain the heritage significance and value to society of historic places.

Visitor safety management ................................................. 8
Getting the balance right .................................................... 10
Figure 1 Consequences of inappropriate risk controls ............... 11
Figure 2 Non fatal accident rates ........................................... 12
How safe are our visitors? ..................................................... 13
Summary ................................................................. 13
PRINCIPLES

VISITOR SAFETY MANAGEMENT

Visitor safety management is about balancing benefits and risks in order to provide overall benefit to society and individuals. It is not about creating a totally risk free society or stopping important recreational and learning activities where the risks are considered and accepted.

Nevertheless we have a duty to ensure, so far as is reasonably practicable, that visitors are not put at risk of harm. They should not be exposed to hidden dangers. The essence of sensible risk management is to focus resources on reducing the most serious risks. These are both those that occur most often and those that have the greatest potential for harm.

Some types of risk can be eliminated without having any adverse effect on benefits. Others can be reduced without significantly affecting people’s enjoyment.

When measures to reduce the risk of personal injury are also likely to significantly reduce the benefits we must ensure that they are sensible, proportionate and appropriate.

As well as taking into account the likelihood that someone may be injured and the seriousness of the injury which may occur, we should also consider the significance of the historic place and the landscape where historic development has taken place, and any cultural identity and well-being.

PRINCIPLES 1 BALANCING RISK & BENEFIT

The benefits might include:

- the activity which gives rise to the risk.
- the benefit to the individual and society from historic places or landscapes.
- the level of sacrifice, in terms of time, trouble and money, needed to introduce measures to reduce the risk. We do not need to go beyond a point where the sacrifice is grossly disproportionate to the risk.

The principle of allowing a balance between risk and the cost of mitigating it is established in law.\(^1\)

People value historic places in many different ways:

- For the way they yield evidence about past human activity. As well as being indispensable to the study of history and archaeology, the historic thread of our environment is vital to our understanding of how our society and landscapes have developed over time.
- For the way that past people, events and aspects of life can be connected through a place to the present – its historic value. This helps link us to our roots and underpins our sense of cultural identity and well-being.
- For the aesthetic value, providing sensory and intellectual stimulation that is attractive in its own right and acting as a catalyst for new creative activity.
- From the meanings a place holds for the people who relate to it, or for whom it figures in their collective experience or memory. This can be found in an individual building or derive from the wider townscape or landscape where historic development is reflected in diverse and distinct field patterns, settlements, building styles, materials and traditions.
- As a catalyst for economic regeneration. Historic buildings often provide the focus for schemes to revive run-down areas.
- As a key component underpinning the economic benefits derived from tourism. For example 48% of all visitors to Scotland went to a historic house, stately home or castle and 35% visited a cathedral, church or abbey. They are particularly important for overseas tourists with 70% visiting historic properties and 58% a cathedral, church or abbey.\(^2\)

It is imperative that measures to reduce risk do not irrevocably damage the historic built environment causing loss of these benefits.

Whilst there has been no subsequent case law that explicitly affords historic buildings the same level of protection as other places of importance, the principle of historic significance must be brought into the balance, it surely must be taken into account when choosing what measures, if any, are appropriate to reduce risk. You should not sacrifice the value of the historic place for the benefit of the individual and society.

People should be allowed to participate in leisure pursuits that are potentially hazardous.

Visitors should be aware of the risks they will face. They also need to understand that although they have a right to appropriate protection they also have a responsibility to behave sensibly and take reasonable care for their own well-being. Safety is a shared responsibility between the visitor and the owner or manager of the property.

Overseas tourists make 8.9 million visits a year to Britain’s castles and historic houses – nearly 30% of all overseas visits.

Visit Britain, September 2013

1 Scotland Visitor Survey. TNS January 2013
2 Edwards v National Coal Board, 1949
3 Cameron Adam, HM Principal Inspector of Health and Safety, Operational Strategy Division, Health and Safety Executive (HSE) setting out HSE’s position following a fatal incident at a castle in Warwick, Castle. For more detail turn to page 80
5 Health and Safety Executive’s Priorities for enforcement of Section 3 of the HSWA 1974: July 2003 (Rev June 2011) published on Health and Safety Executive’s website: http://www.hse.gov.uk/enforce/hswact/priorities.htm#natural viewed August 2015
**GETTING THE BALANCE RIGHT**

Balancing risk and benefit is important at several levels: from the viewpoint of society as a whole, to an organisation and to an individual.

### **TO SOCIETY**

Overzealous application of safety controls, especially ones that exclude access or limit participation can result in:

- **Damage to the heritage value of a significant historic place**
  The thoughtless introduction of physical risk controls can cause irreversible harm to historic fabric and may destroy the aesthetic value of historic parks and landscapes.

- **Loss of opportunity for recreation**
  Access to parks, gardens and historic places enhances people’s mental and physical well-being.

- **Reduction of learning opportunities**
  Many people derive great educational benefit from visits to our sites. Children, in particular, gain hugely from learning outside the classroom. Some important life skills can be developed through appropriate risk activities.

- **Restricting economic potential**
  Attracting visitors to historic places is often a key component of the local economy. Risk control measures must be affordable for property owners and should not spoil the attraction for visitors; otherwise the potential for economic benefit may be lost.

### **TO AN INDIVIDUAL**

It is important to understand how people view and accept risks. An individual’s willingness to take risks is influenced by the potential benefits that would be gained. People of course also vary in their propensity to take risk: from the timid to the wildly adventurous.

People are likely to be much less tolerant of risk when:

- They are exposed to the risk without choosing to be (involuntary exposure).
- They have no control over the outcome.
- There is uncertainty about what could happen.
- They have no personal experience of the risks involved (fear of the unknown).
- It is difficult to judge the likelihood of being harmed.
- There is potential for a major catastrophe (even though the likelihood of it happening may be low).
- The benefits of taking the risk are not clear.
- They are exposed to the risks but others get the benefits.
- The potential accident would likely result from human failure rather than natural causes.

Some of these factors help account for people’s misconceptions about risk and their reactions to accidents. This is seen, for example, in the public’s typically shocked response to rail crashes, despite the number of injuries and deaths arising from them being only a fraction of those arising from car journeys. Such misconceptions are often reinforced by the way accidents are reported in the media. There is often a mismatch between an individual’s perception of risk and that deduced from risk assessment.

It is not practical or even desirable to provide an environment that is free from all risk. It is therefore important to consider what you might do to help your visitors to better understand the risks that they are taking on.

### **TO AN ORGANISATION**

The diagram opposite illustrates how getting risk controls wrong can badly damage an organisation in many ways. Adverse outcomes like these arise from either a failure to recognise and deal with a hazard, or through the wrong response. Our aim is to have the best of both worlds - to introduce risk control measures that are sufficient to safeguard visitors, but do not damage or lessen the attraction of our historic assets.

---

**Figure 1** Consequences of inappropriate risk controls

- Personal Injury or Death to Visitor
- Prosecution leading to reputation damage and financial penalty
- Access Prohibited
- Heritage Asset Value Reduced
- Irreversible Damage to Historic Places
- Involvement of Visitors
- Stress to Employees Involved
- Loss of Opportunity for Visitors to Learn Risk Management Skills

---

**VISITORS DO NOT COME**
Leading to loss of income, learning opportunities and exercise
### HOW SAFE ARE OUR VISITORS?

There are over 53 million visitors a year to properties owned and managed by members of the Historic Built Environment Group. For each million, there are two or three accidents that are serious enough to require a visit to hospital.

Accident rates for visiting historic places compare favourably with everyday activities like travel, and other forms of sport and recreation.

Statistics on accident rates for leisure activities can be derived from a number of sources. These include data collected from hospital accident departments by the Department of Trade and Industry (through the Leisure Accident Surveillance System). This data, when combined with information on the number of hours people are exposed to the risk while carrying out the activities, can be used to derive estimated non fatal accident rates (expressed here as injuries per 1 million hours exposure).

We have looked at accident rates on sites where VSCG members are able to gather data. (Accurate data is not available for the many sites that are not staffed.)

Over 80% of serious accidents are the result of slips, trips and falls.

Take care when analysing data that has been averaged over a very wide range of sites, activities and exposure times. It is possible that pockets of high risk at particular locations or from specific types of activity are hidden within the averages. This serves to emphasise the importance of carrying out local risk assessments (as discussed in Chapter 4).

### IN SUMMARY...

- It is not practical, or even desirable, to provide visitors with completely risk-free environments.
- We must do what is reasonably practicable to create a safe environment.
- A safe environment can be defined as one where the level of risk is broadly acceptable to both the visitor and to society at large.
- We should take into account the benefits provided by allowing access and participation, including those from risk-taking.

---

**Figure 2 Non fatal accident rates**

Accident rates for visiting historic places compare favourably with everyday activities like travel, and other forms of sport and recreation.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Number of injuries per million hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visitor to a staffed historic property</td>
<td>1.4</td>
</tr>
<tr>
<td>Bus/coach travel</td>
<td>3.4</td>
</tr>
<tr>
<td>Walking</td>
<td>7</td>
</tr>
<tr>
<td>Car travel</td>
<td>10</td>
</tr>
<tr>
<td>Swimming</td>
<td>20</td>
</tr>
<tr>
<td>Fishing</td>
<td>40</td>
</tr>
<tr>
<td>Sailing</td>
<td>40</td>
</tr>
<tr>
<td>Mountaineering</td>
<td>43</td>
</tr>
<tr>
<td>Cycling</td>
<td>50</td>
</tr>
<tr>
<td>Jogging</td>
<td>100</td>
</tr>
<tr>
<td>Horse riding</td>
<td>170</td>
</tr>
<tr>
<td>Motocycling</td>
<td>400</td>
</tr>
<tr>
<td>Cricket</td>
<td>1300</td>
</tr>
<tr>
<td>Football</td>
<td>2900</td>
</tr>
</tbody>
</table>

**Note on sources of data used in diagram**

The Department of Trade and Industry stopped collecting data in 2003 but it remains a valuable source of available accident statistics. The data is now managed by RoSPA.


Data for bus or coach travel, walking, car travel, cycling, and motocycling from Department for Transport, Road Casualties Great Britain 2007, table 7.6 p64 © Crown copyright 2008.


Note on sources of data used in diagram

The Department of Trade and Industry stopped collecting data in 2003 but it remains a valuable source of available accident statistics. The data is now managed by RoSPA.

http://www.hassandlass.org.uk/


Data for bus or coach travel, walking, car travel, cycling, and motocycling from Department for Transport, Road Casualties Great Britain 2007, table 7.6 p64 © Crown copyright 2008.
Our aim is for visitors to be aware of all the risks they face and to have the chance to decide whether or not to accept them. There should be no nasty surprises.

CHAPTER 2
GUIDING PRINCIPLES

The guiding principles emphasise the importance of conservation, access and personal enjoyment in the countryside and the historic built environment, and the need to find a balance between safety and these wider objectives. The principles also underpin the balance between the personal responsibility of the visitor and the responsibility of the landowner or manager.

The principles apply to individuals and groups visiting land, water, buildings and other structures. They are relevant to parks and gardens, historic houses and monuments, canals and rivers, as well as open countryside, nature reserves and forests. Visitors include paying visitors and people engaged in informal recreation, as well as participants in various sports and activities. The principles are not intended to cover employee safety or the work of contractors, which are well covered in publications from the safety authorities in the UK and Ireland.

Guiding principles in summary .................................................. 16
1 Fundamentals ................................................................. 17
2 Awareness ................................................................. 18
3 Partnership ................................................................. 18
4 Responsibility ............................................................ 19
Figure 3 Historic built environment risk control spectrum .......... 20
Case Study Fountains Abbey & Studley Royal ......................... 22
5 Risk control .............................................................. 24
GUIDING PRINCIPLES IN SUMMARY

1 FUNDAMENTALS
- Take account of conservation, heritage, recreation, cultural and landscape objectives.
- Do not take away people’s sense of freedom and adventure.
- Avoid restrictions on access.

2 AWARENESS
- Ensure that your visitors know the risks they face.
- Inform and educate your visitors about the nature and extent of hazards, the risk control measures in place, and the precautions that they should take.

3 PARTNERSHIP
- Recognise that people taking part in similar activities accept different levels of risk.
- Recognise that risk control measures for one visitor group may create risks to others.
- Work with visitor groups to promote understanding and resolve conflict.

4 RESPONSIBILITY
- It is important to strike a balance between visitor self-reliance and management intervention.
- It is reasonable to expect parents, guardians and leaders to supervise people in their care.
- It is reasonable to expect visitors to exercise responsibility for themselves.
- It is reasonable to expect visitors not to put others at risk.

5 RISK CONTROL
- Assess risks and develop safety plans for individual sites.
- Risk control measures should be consistent.
- Risk control measures should take account of wider benefits to society.
- Monitor the behaviour and experiences of visitors to review visitor safety plans.
- Make sure that your work activities do not expose visitors to risk.

1 FUNDAMENTALS

TAKE ACCOUNT OF CONSERVATION, HERITAGE, RECREATION, CULTURAL AND LANDSCAPE OBJECTIVES

The use of safety precautions may conflict with conservation, heritage, recreation or landscape values and objectives to adversely affect the historic built environment.

For example, it would be possible to reduce risk when walking around the walls of a castle by erecting railings. Worn and uneven steps and paving could be replaced by new modern materials. Fencing might lessen risk if erected at the edge of ha-ha’s or lakes. However, the application of such control measures could fundamentally detract from the integrity of historic places and the inherent attraction and understanding of the historic environment.

A balance must be achieved between risk and the impact of safety measures on the historic fabric, the historic and cultural significance, and the setting of the built structures and places. Physical intervention may not be the most appropriate solution; management of access or provision of information may provide better ways to protect visitors without damaging the historic built environment.

DO NOT TAKE AWAY PEOPLE’S SENSE OF FREEDOM AND ADVENTURE

People should have the freedom to make informed choices about whether or not to go to places with higher risks, as long as they are fully aware of them.

For example, visitors to an historic mill should be free to climb steep ladders to get to the top floors, if that is their informed choice.

Do not destroy the appeal of exploring the historic environment by superimposing inappropriate ‘urban’ control measures.

AVOID RESTRICTIONS ON ACCESS

Try to find safety solutions that both allow access and protect the buildings, structures or landscape. Only restrict access as a last resort.

You may need to exclude the public due to natural processes (such as erosion or landslip); or weather, for example if a surface is particularly slippery to walk on when wet; or to carry out repairs or commercial operations (such as events). If so, keep restrictions as short as possible, and time them to cause least interference to visitors.

Avoid giving visitors a long list of dos and don’ts; and remember that disclaimers do not provide legal protection.

Risk control measures should take account of the historic fabric, the historic and cultural significance and the setting of buildings and structures.

Skara Brae, Orkney
**2 PRINCIPLES**

**ENSURE THAT YOUR VISITORS KNOW THE RISKS THEY FACE**

Your aim is for visitors to be aware of all the risks they face and to have the chance to decide whether or not to accept them. There should be no nasty surprises. Visitors may arrive with full knowledge of all the risks. Sometimes the risks are apparent on arrival at a site. In other cases, information about risks might be provided on signs at car parks or access points; or provided in leaflets, on entry.

It is reasonable to expect visitors to recognise the hazards from natural features in the landscape, such as cliffs. Once the visitor is aware of the nature of the risk, for example an unfenced drop, he or she can then decide whether to accept it and go near the edge. You may, however, need to warn of less obvious hazards. For example, the edge and potential drop from one side of an artillery battery might be obvious, but a visitor intent on exploring it may need to be made aware that there is a bigger drop from the other side.

Usually it is reasonable for you to expect people to be aware of the normal risks associated with the built environment. You may, however, need to inform visitors of additional hazards specific to the historic nature of the places they are visiting.

**3 PARTNERSHIP**

**INFORM AND EDUCATE YOUR VISITORS ABOUT THE NATURE AND EXTENT OF HAZARDS, THE RISK CONTROL MEASURES IN PLACE, AND THE PRECAUTIONS THAT THEY SHOULD TAKE**

You can often manage and reduce risk through information and education rather than by physical intervention on site. High risk groups can be targeted.

Children might be informed through schools or parents. Other visitors may be contacted through membership or friends’ organisations, event organisers, governing bodies and local user groups, and by information issued with licences, tickets or permits. Leaflets can be included with admission tickets or provided free of charge; information can be added to orientation and interpretation panels.

Consider providing advice on websites, social networking media and in places such as tourist information centres, shops, and holiday accommodation, as well as at the site itself. The Internet, local radio and telephone message lines can be used to give up to date information; for example if there has been storm damage or works are in progress. Signs can be erected in car parks, stations and at other main access points.

**RECOGNISE THAT PEOPLE TAKING PART IN SIMILAR ACTIVITIES ACCEPT DIFFERENT LEVELS OF RISK**

You need to understand differences in how people view and accept risk. Visitors to an historic site will vary in the level of risk they are prepared to accept.

There may be differences according to age, fitness and mobility. Children may treat historic structures like a play area or may be more inquisitive and explore less accessible parts of the structure. Even the same individual may have a different tolerance of risk according to the weather on the day, or the time available for the visit.

**RECOGNISE THAT RISK CONTROL MEASURES FOR ONE VISITOR GROUP MAY CREATE RISKS TO OTHERS**

For example, a fence erected along an historic canal lock side to prevent a walker drowning might create a crush hazard to a boater, whilst the raised stone grips that help prevent a boater slipping when pushing lock gates could create a trip hazard to passengers. Speed humps designed to slow cars can be a hazard to cyclists.

**WORK WITH VISITOR GROUPS TO PROMOTE UNDERSTANDING AND RESOLVE CONFLICT**

For example, encourage cyclists to slow down or dismount on narrow paths used by walkers. Consider promoting physical segregation of different uses. Promote awareness of the needs of other users.

**4 RESPONSIBILITY**

**IT IS IMPORTANT TO STRIKE A BALANCE BETWEEN VISITOR SELF-RELIANCÉ AND MANAGEMENT INTERVENTION**

This principle is illustrated in Figure 3, Historic built environment risk control spectrum on page 20.

The general premise is that as the location becomes more remote and terrain more rugged, the level of visitors’ skill and self-reliance should be more advanced. It is reasonable to expect visitors to have greater knowledge and awareness of risks and take more personal responsibility for their own safety. At the same time, the level of management intervention required would decrease and fewer physical safety measures will be provided.

As the location and terrain become more developed, there will generally be higher visitor numbers to historic buildings and structures and the level of management intervention would increase; although the relationship is not always this straightforward.

**In remote or rugged locations, where few or no visitor facilities have been provided, it is reasonable to expect higher levels of user self-reliance.**

The standard of access paths to historic sites in remote and rugged locations is likely to reflect the terrain.

In remote or rugged locations, where few or no visitor facilities have been provided, it is reasonable to expect higher levels of user self-reliance.
### Figure 3 Historic built environment risk control spectrum

<table>
<thead>
<tr>
<th>General level of visitor use, location and terrain</th>
<th>Level of visitors’ skill, self-reliance and personal responsibility</th>
<th>Level of management intervention</th>
</tr>
</thead>
</table>
| **Very lightly visited** | **Advanced**  
Personal skills, awareness of risks and self-reliance appropriate for the terrain. Visitors accept responsibility for their own safety | **Minimal**  
Intervention only for very high risks. Little, if any, information provided |
| **Lightly visited** | **Moderate**  
Skills, awareness of risks and self-reliance are important. Some personal responsibility expected | **Minor**  
Intervention for high risks. Limited information provided |
| **Moderately visited** | **Minor**  
Self-reliance awareness of risks and personal responsibility encouraged | **Moderate**  
Intervention for significant risks. Information provided |
| **Heavily visited** | **Minimal**  
Previous experience of visits to historic sites and awareness of risks not expected. Visitors expected to follow advice and act responsibly | **Advanced**  
Risks actively managed. Information provided |

#### ZONING

The level of management intervention can vary within a site. There may be a gradual transition in the intensity and type of hazard management, for instance as you move from the house and garden further out into the historic landscape park. Larger sites are often divided into zones, which can help to prioritise the focus of management effort.

Although the diagram shows four zones, in practice there is a gradual transition, rather than clear divisions between them.

#### LIMITATIONS

The risk control spectrum is a simplified model to aid our thinking. It does not cover all eventualities. For example, adverse weather conditions can make visiting historic structures in any terrain more difficult.

The level and type of management intervention is influenced by the particular characteristics of your site – for example, by its historic, landscape or conservation value. It will also reflect past management decisions. In many cases these led to the introduction of physical risk controls, like barriers, that might not be the choice when modern-day risk management techniques and building conservation values are applied. Sometimes, in the past, barriers were introduced as a knee-jerk response to an isolated accident. Often a more considered risk assessment might indicate that barriers were not necessary, but an understandable reluctance to remove a risk control, added to the need for consistency throughout a site, has sometimes led to their retention and even proliferation.

Another issue is that the historic significance of buildings and structures does not always neatly follow our model. Important structures can be found in city centres, remote countryside and everything in between.

There may be justification for a high level of management intervention (even including the introduction of significant physical safety measures) in remote historic sites, if the risk is sufficiently high and the hazard not obvious.

If, however, the site was of exceptional heritage asset value, there would be a presumption against using any fixed physical risk controls. This is explored in greater detail in Chapter 4. See Figure 5 Risk, heritage asset value and appropriateness of physical risk controls on page 40.
**Fountains Abbey & Studley Royal**

Fountains Abbey & Studley Royal is an estate in North Yorkshire owned and managed by the National Trust. Its outstanding cultural and built heritage asset value is recognised in its designation as a World Heritage Site. The abbey ruins are set in 323 hectares (800 acres) of countryside that include 18th century landscape gardens, a deer park with veteran trees, a monastic water mill, Elizabethan mansion and a Victorian Gothic (Revival) church.

The integration of historic buildings and landscape create a special sense of place attracting up to half a million visitors a year. 330,000 of these visitors pay for admission to the abbey and water gardens, most entering through the visitor centre. The National Trust employs 65 regular and 60 seasonal staff, who are assisted by volunteers, on the site.

English Heritage is responsible for the conservation of the abbey ruins, Fountains Abbey Mill and St. Mary’s Church.

**ZONING THE ESTATE**

The estate lies in relatively remote and rural countryside. Parts of the property are, however, heavily visited. Staff identified these areas to aid the risk assessment process.

The Visitor Centre, Abbey, Mill and Water Garden all sit at the heavily visited end of the risk control spectrum, receiving a broad range of visitors, with varying abilities, where a high level of management intervention to manage risks is appropriate. These areas are mostly easily accessible on metalled paths with surface dressing. Visitors are generally likely to be aware of first aid points and there are higher numbers of staff and volunteers on hand to give advice and help with any problems.

Visitors are provided with a free welcome leaflet that also contains information about hazards when they pay to enter these parts of the site.

It is important to note that the advanced level of management intervention in the heavily visited zones has not led to a proliferation of physical measures like signs or barriers. These would damage the exceptional heritage asset value of the property and significantly lessen the spiritual experience and sense of freedom to explore that is enjoyed by visitors.

The remainder of the estate has lower visitor numbers and less accessible terrain, positioning it more towards the lightly visited end of the risk control spectrum. Here the nature of the landscape and fewer buildings mean there are fewer staff present and less information and help; visitors are expected to be more self-reliant. The Deer Park falls into this zone, whilst the Mackershaw parkland area is even further towards the rugged, more lightly visited classification.

**The Abbey ruins are heavily visited.**

**The Deer Park and Studley Lake are more rural with fewer visitors.**
PRINCIPLES 2 GUIDING PRINCIPLES

4 RESPONSIBILITY

IT IS REASONABLE TO EXPECT VISITORS TO EXERCISE RESPONSIBILITY FOR THEMSELVES

For example, it is reasonable to expect visitors to wear suitable footwear, not to climb fences and barriers and to listen to advice provided by staff. At sites such as mines or industrial heritage attractions where protective equipment is provided for the visit, it is reasonable to expect visitors to wear it as directed for the duration of the visit.

IT IS REASONABLE TO EXPECT VISITORS NOT TO PUT OTHERS AT RISK

For example, visitors need to be careful and patient when passing each other on a narrow spiral staircase, a castle walk or a canal towpath.

5 RISK CONTROL

ASSESS RISKS AND DEVELOP SAFETY PLANS FOR INDIVIDUAL SITES

Every organisation or individual property owner should set out their approach to visitor safety. This should include an overall management framework and procedures for carrying out individual site assessments. It should contain an overview of accident data and consider what levels of risk are acceptable. What constitutes a ‘risk’ will vary between organisations, and there will often be a hierarchy of safety plans. A field monument, an industrial mill, a stately home, a castle or an historic designed landscape could each have its own risk assessment, and in some cases a safety plan. Within them, the risks arising at individual structures, a garden, car park or café could need more detailed assessment. Risk assessment in practice is covered in detail in Chapter 4.

RISK CONTROL MEASURES SHOULD BE CONSISTENT

Consistency is important within a particular location; from site to site within a regional or national organisation; and between different organisations. Ideally, the visitor should know what to expect at any location. Inconsistencies in the application of risk controls (for example the absence or presence of fencing at similar drops) make it very difficult for visitors to make informed judgements about accepting risk. Note that consistency is not the same as uniformity. Design solutions should be allowed to respect the individual character and setting of each site.

RISK CONTROL MEASURES SHOULD TAKE ACCOUNT OF WIDER BENEFITS TO SOCIETY

Benefits, such as those arising from participation in educational, leisure and recreation activities or from conservation of landscape and heritage, should be considered as part of the decision-making process. As far as possible, avoid using risk control measures that have an adverse impact on the historic fabric or setting, or which spoil people’s experience. However, you must take all reasonable steps to ensure the safety of visitors. When you have done this, there may well come a point where the cost and consequences of introducing further control measures would be grossly disproportionate to the likely safety gains.

REFERENCES AND FURTHER INFORMATION

Historic Scotland web link – “Why is the historic environment important?”
http://www.historic-scotland.gov.uk/index/heritage/valuingourheritage/why-is-the-historic-environment-important.htm


As far as possible avoid using risk control measures that spoil people’s experience. A balance must be achieved between risk and the impact of safety measures. This simple handrail has been in place for many years and is considered necessary because of the uneven surface. It fits with the landscape much better than modern safety fencing.
Visitor safety management is no different to other management processes that demand a systematic approach.

CHAPTER 3
PLANNING & ORGANISING

This chapter introduces a framework for planning your approach to visitor safety, ensuring that it integrates with other management activities. We build on the general principles set down in recognised management systems whilst taking account of the experience of VSCG members and those who have attended our seminars and workshops. Whilst some of this chapter may be very familiar to those in occupational health and safety, it is intended to help the wider range of people involved in visitor safety management.
**Elements of an Organisation’s Visitor Safety Plan**

Visitor safety management is no different to other management processes that demand a systematic approach, as shown in the diagram below from HSE publication HSG65 “Managing for health and safety” (2013).

**1 PLAN**

**Policy and Strategy Development**

- Developing a policy for visitor safety management and promoting a strategy for its achievement will ensure effective use of your organisation’s resources.
- An effective policy will:
  - Demonstrate the commitment of senior management to visitor safety
  - Integrate visitor safety management with other relevant organisational policies and management activities throughout the organisation

**2 DO**

**Organising and Implementing Your Plan**

- Set out procedures for communicating with visitors, user groups and other stakeholders.
- An open and inclusive approach is essential to gain their support. Find out what they expect and learn from their experiences. They may be able to provide information about accidents and near misses and often produce useful codes of conduct for sports and activities.
- Define clear roles.
- State who is responsible for carrying out each task, producing overall visitor safety plans, undertaking individual risk assessments and acting on their findings.
- Be clear who will audit the process and review progress.

**Risk Profiling**

- Record what you know about your visitors and the types of activities they undertake.
- Define clear roles.
- Identify the hazards that your visitors might encounter and assess the risk that they might be harmed.
- Risk assessment is at the heart of implementing visitor safety management and is covered in detail in Chapter 4.
- It might be helpful to provide generic risk assessments for common visitor activities (for example walking and cycling), facilities (such as car parks and picnic areas) or structures (like stiles and footbridges).

For some activities, you can draw upon established good practice guidance. For example, the HSE has produced useful advice on managing events and crowds. There are standards for children’s play equipment. You can find further details on page 31.

Take care when using generic risk assessments or guidance. You will need to adapt them for local circumstances. It is essential to use the knowledge of staff and users who are familiar with the site.

A good relationship with your stakeholders can provide valuable information. Chapter 5 explores methods and opportunities for communication with your visitors.

**Learn More**

- Establish policy for visitor safety and have a strategy for its implementation.
- Set clear objectives and have a good understanding of how they can be achieved.
- Learning from experience is important. You should review the outcomes and, if necessary, make changes to improve things.

**Plan, Do, Check, Act Flowchart**

*Figure 4 Plan, do, check, act flowchart*
MEASURING PERFORMANCE

Monitor what you do. Plan a programme of inspection and keep clear records of your risk assessments and actions.

Many organisations have a large number of sites, often unstaffed. As a result it may take time to fully implement a comprehensive visitor safety programme.

Sometimes it is difficult to decide on the most appropriate course of action. You may need to gather more information, make investigations or get other people’s views before a final decision can be taken. Some VSCG members keep a list of such issues, developed from routine inspections by responsible staff or volunteers.

It helps to follow a written programme of priorities, keeping a record of what has been done and where and listing work planned for the future. You will then be able to demonstrate progress and ensure that the investigation and resolution of any outstanding issues is put into your work programme.

Learn from accidents and near misses.

Getting information on visitor accidents and incidents in the historic built environment is not as straightforward as in the workplace. But accident data is a valuable indicator of risk and provides a measure of performance.

Set out how you will collect data. Are there ways to encourage visitors to let you know about accidents and incidents? Can you learn from surveys?

Have a procedure in place to investigate the causes of accidents and near misses.

Review your risk assessments, taking account of the accident information. Let others know your findings.

LEARN AND IMPROVE

Learn from the information that you have gathered and act to make improvements. Incorporate mechanisms into routine work that allow feedback to be used to improve services and safety for visitors, or to explain why no changes are being made.

REVIEW AGAINST THE GUIDING PRINCIPLES

Review is a key part of the management process. Check at each stage that decisions are consistent with the guiding principles. You should measure progress against plans, identify problems and instigate any corrective actions that may be necessary.

Take an overview across the whole organisation, looking for trends in issues and possible common solutions. Consider whether you need to change the overall strategy.

IN SUMMARY YOU SHOULD...

- have an overall approach to visitor risk management which links in with other policies on visitor engagement
- have a clear structure with defined responsibilities at all levels
- have a programme for carrying out risk assessments, starting with the sites or visitor events you think pose the greatest risk
- keep records of assessments, reviews and implementation of risk controls
- show when new risk control measures are planned to be carried out and demonstrate that resources have been allocated
- make a note of issues that require further investigation before a decision on appropriate control measures can be made, and timetable the investigations into your work programme
- review at local and organisational levels, and make changes in approach where appropriate

SUMMARY

Arley Hall, Cheshire

References and further information

- Recognised management systems
  - HSE publication HSG65 – “Managing for health and safety”. A free download is available at http://www.hse.gov.uk/pubns/books/hsg65.htm
- Managing events
  - HSE on line guidance on event safety – http://www.hse.gov.uk/event-safety/
- Children’s play
This chapter sets out the steps necessary for successful risk assessment and control. We consider the information that you need, suggest a methodology and list what should be recorded. We also look at the relative merits of different ways of managing risks. This should help you to find controls that reduce risk without damaging historic structures or spoiling the experience of our visitors.

Assessing risks to visitors
Step 1 Identify the hazards
Step 2 Consider who might be harmed
Step 3 Evaluate the risks
Case Study St. Mary’s Church, Rye
Deciding on control measures
Hierarchy of risk control
Figure 5 Risk, heritage asset value and physical controls
A hierarchy for falls from height
Step 4 Record your findings & implement them
Case Study Dryburgh Abbey
Case Study St. Andrew’s Castle
Step 5 Review your assessments
Summary
Case Study Great Laxey Wheel, Isle of Man
ASSESSING RISKS TO VISITORS

There is no universally accepted format for carrying out risk assessments. The Health and Safety Executive recommends a five step approach for risk assessment in the workplace. We have used this model as a basis for assessing risks facing visitors in the historic built environment.

**STEP 1 IDENTIFY THE HAZARDS**

Hazards likely to be encountered in the historic built environment fall into two main groups:
- Natural
  - unprotected drops (such as rock outcrops)
  - water (deep, fast-flowing, tidal, cold or with currents)
  - falling rocks, trees, or branches
  - poisonous plants in gardens
- Man-made
  - buildings, bridges, structures, canals, lakes, ponds, mine shafts, fences, paths
  - unprotected drops (such as at castles, abbeys, gardens and other historic buildings and landscapes)
  - steep stairs, narrow passages, and confined spaces (such as tunnels, dungeons)
  - low light levels
  - worn steps, stairs and carpets, uneven paths, paving stones
  - pressure from crowds of people
  - machinery, vehicles and boats
  - work activity (such as building work and landscape and garden maintenance, particularly where heavy machinery is used)
  - sport and recreation activities, whether informal or organised (such as walking, cycling or swimming)
  - other events (such as concerts, pageants, historical re-enactments, fundraising events)

**STEP 2 CONSIDER WHO MIGHT BE HARMED AND HOW**

A useful strategy to adopt for hazard spotting is to imagine looking through the eyes of the visitor; for whom there should be ‘no nasty surprises’. To do this you need to know as much as possible about your visitors. Local staff and volunteers may have useful information, but you may also need to carry out research to gather both quantitative and qualitative data. Methods include specific visitor surveys, adding questions to surveys conducted for other purposes, consulting user groups and conducting focus groups. Simply observing visitor behaviour can also be extremely informative.

The information that you gather can help you to understand the age, abilities and experience of your visitors and why they are there. It is important to know the extent to which they are aware of any risks they face. You should then be able to judge who could be harmed and how.

Consider what your visitors do on site and look out for risks that some activities may pose to other users. Watch out for new or unusual activities that bring new risks. Are there any special events such as sponsored walks, concerts, events, festivals or rallies? Look at the accidents that might occur at different types of location, for example castle walls, gardens, car parks.

Accidents or incidents that have occurred can give an indication of the likelihood of future harm. In the workplace there should be good records of accidents and injuries. Elsewhere it can be harder to obtain accurate accident statistics for visitors. Accidents that occur on unstaffed sites are often not reported. Even on staffed sites the manager may not know if someone has an accident.

Build relationships with the emergency services (including, where appropriate, mountain rescue or coastguard). This is an important part in planning for possible emergencies but should also help ensure that they notify you of any incidents that they attend (see also Chapter 7 on ‘Emergency planning and procedures’).

You can use your literature, information points and visitor centres to encourage visitors to report accidents.

Typically the most numerous accidents are slips, trips and falls. Head injuries from contact with low beams or projecting masonry are also significant. They should usually be considered as ‘likely’ or ‘very likely’ in your risk assessments. While the consequences of such incidents can be minor, trips and falls in the historic built environment may have more serious implications, particularly as drops can be sizeable. It is also important to consider emergency evacuation from difficult locations – for example, if a visitor breaks a leg at the top of a turret accessed only by a narrow spiral staircase.

**STEP 3 EVALUATE**

The risks and decide whether the existing risk control measures are adequate or whether more should be done.

**STEP 4 RECORD**

Record your findings and implement them.

**STEP 5 REVIEW**

Review your assessment and update if necessary.

**HAZARD**

is anything with the potential to cause harm

**RISK**

is the likelihood, high or low, that somebody will be harmed by the hazard, the severity of the harm and the number of people who might be hurt

**RISK CONTROL MEASURES**

are precautions to make an incident less likely to occur and/or the consequences less severe
The level of overall risk from each hazard depends on a combination of:
- the likelihood of harm arising
- the severity of the harm (injury or effect on health)
- the number of people who might be affected

Typically it is graduated from very low (the terms ‘insignificant’ and ‘trivial’ are often used) to very high (‘unacceptable’ or ‘intolerable’).

When the likelihood of harm is high and the consequences extremely severe, the risk is unlikely to be acceptable. Visitors to the historic built environment, particularly when paying for entry, are unlikely to have the same willingness to accept significant risks to themselves as, for example, people pursuing adventure sports.

When the likelihood of harm is low but the consequences severe, it can be more difficult to judge what risks are acceptable and what level of responsibility visitors should take for their own safety.

There are many circumstances where we may choose to accept risks or introduce challenges that may include risks, for the benefits that can be realised. An example is opening a church or cathedral tower to visitors. This might introduce exposure to hazards such as steep stairs, narrow passages and low parapets; but bring benefits from exploring parts of an historic building not normally open to the public. These could include seeing the results of conservation work, gaining an understanding of architecture and methods of building, or enjoying exceptional views. Special conservation tours or one-off openings of parts of a building are likely to require their own separate assessment of risk.

Another example of balancing risk against benefit is in adventure playgrounds and informal play settings, where children can learn through experience of hazards. It is important that parents and children are aware of the risks that they are taking on. You must also have systems in place to ensure that the design of play equipment itself is safe (for example, free from sharp edges and robust enough to take likely loads), and that the equipment is properly maintained.
DECIDING ON CONTROL MEASURES

First, consider whether your risk assessment indicates the need for any further action.

If the assessment shows that the level of risk is already at an acceptable level, then no new risk controls need to be introduced.

There are many such situations where the risk can be accepted – often as a result of a combination of factors such as:
- the hazard is obvious
- the level of risk is low
- physical precautions would have an adverse impact on the visitor experience
- physical precautions would be impractical or would cause damage to the historic fabric, cultural significance or setting of the building or structure

Accepting risk without taking further precautions may be perfectly reasonable in the circumstances, but the reasoning and the decision need to be stated and recorded as part of the risk assessment process.

In some situations your risk assessment may reveal that there are no physical precautions in place or that the existing precautions are not to the standard expected in a modern building. A judgement is then required about whether more needs to be done.

If the level of risk is not acceptable, then choose the most effective risk control measure that is practicable from the hierarchy that follows. The hierarchy is also illustrated in examples of ways to control falls from height shown on pages 42 to 47.

HIERARCHY OF RISK CONTROL

ELIMINATING THE HAZARD

The most effective way to reduce risk is to eliminate a hazard altogether – for example, the hazard from rock falls can be eliminated by removing loose rock or anchoring it in place. The hazard from drowning in a water feature in a historic garden can be eliminated by draining it. The hazard from moving machinery in an industrial setting can be eliminated by preventing the machinery operating.

However, eliminating the hazard is often not possible or desirable. For example, we could not remove historic walls and stones from the precincts of an abbey, or bollards on a quayside even though they may create a tripping hazard. The features that give rise to the hazard may well be the very things that the visitor has come to see.

If you cannot eliminate the hazard, consider preventing access to it. Once again, this is often not practicable or desirable. For example, we could not fence the edge of every drop in a castle, abbey, priory or garden.

Nevertheless there are many situations where this control is used. In some cases this may detract from the visitor experience; for instance if important parts of an historic building are closed or need to be closed if it is wet or windy. Your risk assessment for an historic castle that are acceptable of an historic asset.

In some situations your risk assessment may reveal that there are no physical precautions in place or that the existing precautions are not to the standard expected in a modern building. A judgement is then required about whether more needs to be done.

If the level of risk is not acceptable, then choose the most effective risk control measure that is practicable from the hierarchy that follows. The hierarchy is also illustrated in examples of ways to control falls from height shown on pages 42 to 47.

PREVENTING ACCESS

Your risk assessment for an historic castle that are acceptable.

Informing and educating visitors

The final and commonly used form of control is to inform and educate visitors. Consider to what extent you can rely on notices, leaflets, web information and signs to get your messages across. Whilst it is generally unnecessary to warn of obvious hazards, you need to ensure that your visitors are aware of any unusual or hidden risks. The contribution of information and education to visitor safety management is explored in more detail in Chapter 5.

MANAGING VISITOR MOVEMENT

Another option is to direct the flow of visitors. You could, for example, create paths that take people away from particular dangers or use dense, prickly vegetation as a deterrent to straying from a particular route. This measure is not as robust as those listed above as some people are likely to ignore the route that you are encouraging them to follow.

In the guidance principles of Chapter 2 will help you to decide whether further precautions are necessary. The principles will also guide you in choosing the most appropriate measures to take.

Informing and educating visitors

The final and commonly used form of control is to inform and educate visitors. Consider to what extent you can rely on notices, leaflets, web information and posters to get your messages across. Whilst it is generally unnecessary to warn of obvious hazards, you need to ensure that your visitors are aware of any unusual or hidden risks. The contribution of information and education to visitor safety management is explored in more detail in Chapter 5.

REVERSIBILITY AND APPROPRIATENESS OF SOLUTIONS

Sometimes legal constraints or regulatory requirements affect what you can do – for example, under ancient monuments legislation, or if the landscape is protected. Planning conditions or listed building status may prevent structural changes or determine their nature.

It is important, when proposing a preferred control measure, to explain your thinking and demonstrate that you have considered alternatives. You should therefore include a clear, robust appraisal of all the options. This will often assist in the regulatory process and provide a record of the decision-making and the rationale behind the proposed solution. If the proposed solution is not considered appropriate by the regulatory authority, there is then a record of this discussion. However, even if the regulatory authority does not accept the proposed solution, the responsibility still rests with the owner to devise and implement an alternative solution that balances an acceptable level of risk (carried by the owner) with the impact on the site or built structure.

The hazard from moving machinery is eliminated by securing the mechanism.

Cotehele, Cornwall

Manoeuvring equipment to access historic features

The historic fabric, cultural significance or setting of the building or structure.

Notices are used to inform visitors of unusual hazards at this World Heritage site.
Figure 5 shows a relationship between the level of risk, the heritage asset value of a building, structure or landscape and the appropriateness of physical risk control measures.

Physical risk controls can have different impacts on heritage asset value. Physical controls could include, for example:
- removable barriers that would not damage or adversely affect the heritage asset value
- physical changes to the property that could be reversed without causing damage
- fixed physical changes that could not be reversed without damage to the heritage asset value

Places with exceptional historic value may be damaged by any type of physical intervention. However, on occasions, the importance of allowing public access might outweigh some level of adverse impact on heritage asset value.

Management controls have the advantage that they do not require physical changes to be made and are less likely to spoil the visitor’s experience (and may even enhance it). They might include:
- ensuring visitors are fully aware of the risks, so that they may choose to accept them
- providing alternative access routes that avoid high-risk areas
- allowing access, but only under supervision (by providing guides, for example)
- restricting access, but only in extreme circumstances where the risk is very high

Figure 5 provides general guidance towards sensible and proportionate management of risks in the historic built environment and the selection of appropriate risk controls. How you apply it to your own sites will be determined in the context of specific risk assessments for each individual case.

The presumption against physical control measures does not mean that they should never be considered or applied.

They may be necessary where a medium or high risk of injury to visitors cannot be effectively controlled by management controls alone or, for example, where the risk profile of the location is temporarily increased due to factors such as bad weather or structural damage.

In those instances physical control measures may well be required in order to facilitate safe public access, irrespective of the heritage asset value, or access prevented altogether for a period of time.

<table>
<thead>
<tr>
<th>High risk</th>
<th>Low heritage asset value</th>
<th>Negligible or minimal significance</th>
<th>Non-historic fabric not within historic context</th>
<th>Consider any risk controls that do not adversely impact on significance</th>
<th>Presumption in favour of management controls</th>
<th>Presumption against any fixed physical risk controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medium risk</td>
<td>Moderate heritage asset value</td>
<td>Historic fabric or environment with some significance</td>
<td>Non-historic fabric within historic context</td>
<td>Presumption in favour of management controls</td>
<td>Presumption against any fixed physical risk controls</td>
<td></td>
</tr>
<tr>
<td>Low risk</td>
<td>Exceptional heritage asset value</td>
<td>Historic fabric or environment of highest significance</td>
<td></td>
<td>Presumption against any fixed physical risk controls</td>
<td>Presumption against any fixed physical risk controls</td>
<td></td>
</tr>
</tbody>
</table>

**Use of physical risk controls**

- More appropriate
- Use of physical risk controls
- Less appropriate
Eliminating the hazard
Raising the ground level next to the castle wall largely eliminates the hazard of falling from height at the furthest part and (nearer the camera) reduces the harm from a possible fall.

This solution is comparatively rare, but can also be found, for example, when an old mine shaft is filled or capped.

Preventing access
Access to a drop can be prevented by bars or grilles. This is the most complete form of physical protection, with the risk eliminated entirely. This solution is more likely where the consequences of a fall are a certain fatality.

Restricting access by deterrent fencing
This is perhaps the most common physical solution, by using post and rail or steel bars. The spacing of the rails deters access but doesn’t entirely prevent it.

The type of material, its strength and the method of fixing would hold the barrier in place if a person fell against it.

There is an assumption that visitors will act reasonably and exercise personal responsibility.

The fencing in these examples will deter access effectively and will prevent inadvertent falls but will not stop a visitor determined to climb the barriers.

DECIDING ON CONTROL MEASURES:
A Hierarchy for Falls from Height

Restricting access by edge protection
An existing parapet provides a degree of edge protection but its height may be lower than ideal. The width of the outer wall provides protection, although the embrasures are low. On the inside, barriers prevent falls from the Upper Gun Platform to the Gun Room below. If the existing protection is retained without alteration, there will be some residual risk which needs to be justified within the risk assessment.

Restricting access by symbolic fencing
Here the design and choice of materials (such as a rope or single rail) suggest to the visitor that access to an area is denied, but it is easy for a visitor to evade or step over the barrier.

The type of material used and the method of fixing would not necessarily hold the barrier in place if a person fell against it. This is a common solution where the fall height is not great and the consequences relatively minor, or the exclusion is for conservation or operational reasons.

In some cases, bushes or vegetation are used as a deterrent, although deciduous plants may not be effective in winter.

Access to the drop is not restricted but a handrail or handhold is provided away from the drop.

The handrail provided on the wall adjacent to steps leading down from the outer defences to Queen Anne’s Garden encourages visitors away from the edge and helps reduce the likelihood of slips and trips.

All the examples that follow are site-specific, with decisions taken on the basis of a local risk assessment.
Access to the drop is not restricted but the consequences of a fall are made less severe.

You could make changes to the ground level to reduce the fall height and/or soften the surface onto which a person might fall. This is a less common solution in an historic building but can be found at a play facility.

Sometimes the effect can occur naturally over time. For example, silt accumulating in a moat or ha-ha may reduce the height of a fall and the likely severity of its consequence.

**Conservation or reinstatement of the historic fabric to remove a hazard or reduce its severity**

Castle Rushen is one of our finest medieval castles. The original roof of the West Tower was altered during the 19th century. A steeply pitched slate roof created a hazardous unprotected drop, of over a metre, down to the level of the rainwater gutter. By 2011 repairs were needed to the leaking 19th century roof. The opportunity was taken to reinstate the original design. The flatter profile of the medieval lead roof reduces the likelihood and severity of a fall to an acceptable level.

Managing access

You can create routes that encourage visitors to avoid hazardous drops. These do not necessarily need to be surfaced paths.

A mown path at Lowther Castle Gardens helps to keep visitors away from the edge of the escarpment.

Mowing or strimming the vegetation can also be used to reveal a hazard. Although this at first seems contradictory, it can be seen to work in practice.

At Fountains Abbey, mowing the edge of the drop makes it clearly visible to visitors as they approach. But they are guided away from it by the obvious mown path leading them through the arch.

Remember that this method of control may become less effective in the winter as the grass dies back, making the distinction less well defined.

**Providing partial edge protection**

Barriers are provided for limited sections where the likelihood of a fall is greater.

The dry moat around the fort gives rise to a risk of falls. The hazard is, however, obvious and relatively easy to see. For the most part there is no edge protection.

Barriers are provided for a short length on either side of the approach to the main pedestrian access bridge.

**DECIDING ON CONTROL MEASURES:**

A Hierarchy for Falls from Height
Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Actively managing the hazard to make it as obvious as possible

Regular strimming of grass along the edge of a modest drop like a ha-ha may be sufficient to make it easy to avoid.

At Fort George, where the height of fall from the ramparts is more significant, signs incorporating a pictogram are also used to draw attention to the sudden drop.

Regular strimming of grass along the edge of a modest drop like a ha-ha may be sufficient to make it easy to avoid.

At Fort George, where the height of fall from the ramparts is more significant, signs incorporating a pictogram are also used to draw attention to the sudden drop.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.

Providing warnings and information on signs and leaflets

Visitors can be informed on entry to the property about hazards that they might encounter. This could be on notices or literature.

Signs might also be used within the property where the risk is about to be encountered. Sometimes they might be the only type of risk control. In other circumstances they may be used in addition to provision of physical barriers.

Warning visitors about the nature of hazards on the site allows them to decide whether or not to proceed.

Warning symbols should be used whenever possible as they avoid the need for translation.
STEP 4
RECORD YOUR FINDINGS AND IMPLEMENT THEM

You must be able to demonstrate that you have a system in place to identify hazards and evaluate risks. But you are not required to record every possible type of hazard. Ignore the trivial and concentrate on the significant hazards that could result in serious harm, or affect several people.

You should keep a record of your assessments, particularly when significant risks are identified, whether or not any further precautions are proposed. This will be useful for later review and for sharing the findings with your site staff.

When writing down your results keep it simple. Risk assessments do not have to be made in great detail. Reasonable and sufficient. The level of detail in your assessment will depend upon the type of hazard. Ignore the trivial and concentrate on the significant hazards. Always use clear language and avoid jargon.

Your risk assessments may not result in any new risk control measures being introduced. The assessment may indicate that a particular location or hazard presents a significant yet acceptable level of risk and that no further precautions are proposed. If this is the case, be sure to record your reasoning. If anything substantially happens that casts doubt on your assessment, carry out a further review.

If you find that there are a lot of improvements that you could make, big and small, don’t try to do everything at once. Make a plan with sensible priorities that identifies who will do what, where and when. Tackle the things that will provide the greatest improvement or prevent the worst anticipated accident first. Consider also the things that can be achieved in either the short or longer term. The better, more robust long-term solutions may take longer to arrange and complete, but significant risks must be considered promptly. Your action plan should clearly show what actions are scheduled to be completed.

Your risk assessments may not result in any new risk control measures being introduced. The assessment may indicate that a particular location or hazard presents a significant yet acceptable level of risk and that no further precautions are proposed. If this is the case, be sure to record your reasoning. If anything subsequently happens that casts doubt on your assessment, carry out a further review.

If you find that there are a lot of improvements that you could make, big and small, don’t try to do everything at once. Make a plan with sensible priorities that identifies who will do what, where and when. Tackle the things that will provide the greatest improvement or prevent the worst anticipated accident first. Consider also the things that can be achieved in either the short or longer term. The better, more robust long-term solutions may take longer to arrange and complete, but significant risks must be considered promptly. Your action plan should clearly show what actions are scheduled to be completed.

Your risk assessments may not result in any new risk control measures being introduced. The assessment may indicate that a particular location or hazard presents a significant yet acceptable level of risk and that no further precautions are proposed. If this is the case, be sure to record your reasoning. If anything subsequently happens that casts doubt on your assessment, carry out a further review.

If you find that there are a lot of improvements that you could make, big and small, don’t try to do everything at once. Make a plan with sensible priorities that identifies who will do what, where and when. Tackle the things that will provide the greatest improvement or prevent the worst anticipated accident first. Consider also the things that can be achieved in either the short or longer term. The better, more robust long-term solutions may take longer to arrange and complete, but significant risks must be considered promptly. Your action plan should clearly show what actions are scheduled to be completed.
St. Andrew’s Castle – mine and countermine
Managing risks without detracting from the visitor experience

History

St Andrews Castle was the official residence of Scotland’s leading bishop throughout the Middle Ages. Cardinal Beaton, opposed to closer political ties with Henry VIII’s Protestant England, had the Protestant preacher, George Wishart, burned in front of the castle. This resulted in Beaton’s own murder and the occupation of his castle by Protestants.

The ensuing siege resulted in the castle’s most interesting feature – the mine and countermine. These underground passages, cut through solid rock, are unique survivals of bloody and bitter medieval siege warfare.

The mine was constructed by the attackers to put gunpowder under the foundations to bring down the castle walls. The countermine was dug by the defenders of the castle to intercept the mine and repel the attack.

Visitors enter through the hastily-dug narrow countermine. Less than half way through, an almost vertical shaft drops down to the more spacious mine. A short fixed ladder gives access to this change in level. Visitors can continue along the mine to its end, at a vertical ventilation shaft, but must then retrace their route.

Review of visitor access

Incidents elsewhere, which led to the rescue of members of the public from difficult locations, prompted staff to further review how a visitor, if ill or injured, could be rescued from all areas of the site. The easy response would have been to close the mine and countermine to visitors. However, the opportunity to visit the mine complex greatly enhances the visitor’s experience of the monument. The review therefore focused on ensuring risk control measures and procedures were adequate to allow visitors to access all areas.

These include:

- a lighting system supported by emergency power back-up
- a handrail along the lower and more uneven countermine
- an automatic pump to prevent flooding (the handrail doubles up as a pipe to take water out of the mine)
- an annual engineering inspection (leading to a programme of future work, such as remedial descaling of rock)

Each day, before opening to visitors, staff check that:

- all lighting is working properly
- there is no excessive build-up of water
- any delamination of the bedrock is identified and made safe
- general conditions are acceptable for public entry
- if any of these factors are not acceptable the area will remain closed until appropriate action can be taken.

Information

The review considered how one of the key guiding principles – to inform and educate your visitors about the nature and extent of hazards, the risk control measures in place, and the precautions that they should take – could be achieved.

A new information board showing a cross-section of the mine was designed. It includes key dimensions, shows the ladder and includes warnings of the restricted headroom and slip and trip hazards.

Visitors now have enough information to allow them to make an informed choice about entering the mine complex.

Emergency arrangements

The review also considered the adequacy of emergency procedures in the event of an accident. Liaison with the local Fire and Rescue Service and a local mine rescue group identified issues to be resolved, such as the type of stretcher most suitable for the environment, as well as the need to remove the handrails from the fixed ladder at the change in level.

An improved system of regular checks by staff has been introduced, to ensure that emergency plans are quickly put into action if required.

CASE STUDY

St. Andrew’s Castle – mine and countermine
Managing risks without detracting from the visitor experience

In the countermine looking back towards the entrance.

The change of level and ladder descent to the mine.

Mine and Countermine

The mines have low ceilings and steep, uneven surfaces, which can be slippery. Please take care if you decide to explore inside. Children must be accompanied by an adult.
You should regularly review risk assessments as a matter of course.

In addition they should be reviewed immediately following:
- an incident or near miss
- a significant change in the number or type of visitors
- new activities or working practices on site

Such reviews may highlight the need for additional or alternative risk controls, or may conclude that existing risk controls are sufficient. On occasion the review might even suggest the removal of a risk control. For example if it was inconsistent with the treatment of similar hazards elsewhere on the property.

The revised findings should be recorded and retained for future reference.

References and further information:
The original version of the regulations is available on a UK Government web site at


Information on managing health and safety is available on HSE’s web site at
http://www.hse.gov.uk/managing/index.htm

HSE’s “Five steps to risk assessment” guidance is available at:
http://www.hse.gov.uk/pubns/indg163.pdf

School trips and outdoor learning activities:
http://www.hse.gov.uk/services/education/school-trips.pdf

Good information can help make visitors more aware of the particular hazards they will encounter in the historic built environment.

CHAPTER 5
THE ROLE OF INFORMATION & EDUCATION IN RISK CONTROL

This chapter considers the role of information and education in risk control. We emphasise the need to give visitors the knowledge to adapt their behaviour to suit the historic environment and the conditions they will experience. This helps to encourage visitors to take more responsibility for their own safety.

The management of safety should be an integral part of your overall system to meet the needs of all your visitors. Clear, well designed information located sympathetically at strategic locations can help to raise and maintain awareness. There are opportunities at different stages of the process.

The visitor journey ........................................ 56
Figure 6 The visitor journey ................................ 56
The destination experience ............................... 58
Information ................................................... 59
Paths .......................................................... 59
Signs .......................................................... 61
Sign design .................................................... 62
Sign location ................................................. 62
Monitoring & review ........................................ 62
The role of education ....................................... 63
Interpretation ................................................ 63
THE VISITOR JOURNEY

Look at the whole journey through the eyes of your visitors and be careful not to make false assumptions about their abilities. Do not assume that it would be unsafe for certain groups to visit. A visit may be more challenging, but the reward is likely to be greater too.

The contrast between "extreme" practitioners and more gentle recreation participants is readily apparent in the countryside is not so evident among day participants that is readily apparent in the practitioners and more gentle recreation is likely to be greater too.

Well-designed safety information should:
- alert visitors to the nature, location and severity of hazards and risks and provide information about any restrictions
- explain the nature and extent of risk control measures provided by the owner or manager of the site
- give visitors information to help them to decide for themselves about the risks to which they are likely to be exposed, and the precautions they should adopt
- let visitors know what is expected of them, on the understanding that they share some responsibility for their own safety

VISITING THE PAST: An analysis of the drivers of visiting historic attractions, English Heritage 2011

http://content.historicengland.org.uk/content/docs/research/visiting-the-past.pdf

The visitor journey

Figure 6 The visitor journey

Diagram based on Visitor Journey © http://www.livetourism.co.uk

---

1 Visiting the past: An analysis of the drivers of visiting historic attractions, English Heritage 2011 Viewable at: http://content.historicengland.org.uk/content/docs/research/visiting-the-past.pdf
THE DESTINATION EXPERIENCE

Carefully consider what will greet your visitors upon arrival. Use the opportunity to welcome them and provide key information.

Good information can make our visitors more aware of typical hazards in the historic built environment as well as hazards specific to your site. This should help them to take responsibility for their own safety and provide appropriate supervision for those in their care.

It may also help to demonstrate that you have acted reasonably if an accident does occur or in the event of a claim against you.

Signs should be carefully designed to give visitors the key messages. The examples below vary in their effectiveness and do not create a welcoming first impression.

- Signs and leaflets that state visitors ‘enter at their own risk’ have no validity in civil law. You cannot disclaim liability in this way and most visitors will ignore them.

INFORMATION

TYPES
- leaflets, posters, tickets and booklets
- signs, notices and information boards
- verbal information
- web sites, social networking and apps
- recorded telephone information lines
- local press or broadcast media (to publicise, for example, large events or the consequences of unexpected weather or emergency works)

You should identify your partners and work with them to achieve a common information strategy. This could be through meetings with other heritage organisations or local and regional historic house groups. It could, for example, be through co-operation between an owner and a local authority.

DIVERSITY AND SOCIAL INCLUSION

Think about the needs of different types of visitor. Ensure that any information you publish is accessible for all. Consider different:
- formats
- sizes
- letter and number sizes (fonts)
- languages

PATHS

SURFACE GRADING AND CONDITION

Provide information about the surface and condition of pedestrian routes and routes for people with disabilities. In particular, you should consider the surface condition, steepness, exposure to drops and steps around the main building or other parts of the historic property attracting most visitors.

The information that you provide should help visitors to assess whether they have the abilities to manage the risks on the visitor route and the extent to which they may have to supervise people in their care.

You should also consider the nature of the terrain in which the historic feature is located. In the countryside, the condition of the routes and the extent of signage at historic features such as Roman walls, hill forts or battlefield sites should take account of the location. Imposing urban solutions in a rural environment would not usually be appropriate.

When you write programmes and guides for activities and events, include information on what people taking part should wear and what equipment they should carry.

WAYMARKING

Use accurate and properly maintained waymarkers to direct people using your paths. Waymarking should indicate the type and grade of the route and enable a visitor to find a path from a car park or other entrance.

It is important to make sure that the way is obvious at junctions with other paths, roads or tracks, and where unofficial paths leave the visitor route. However, you should always be designed to have the smallest possible impact on the setting of the historic environment.

Waymarking should be clear and sufficient to enable visitors to decide on their options. For example, knowing the distance back to the start and on to the end of the route will help them to choose to continue or retrace their steps.
**PRACTICE 5 THE ROLE OF INFORMATION**

**COMMUNICATION STRATEGY CHECK LIST**

**Who is the audience for the information?**
Consider targeting specific segments such as people new to the site, visitors from other countries, particular age groups or people from ethnic minorities.

**How is the information going to reach that audience?**
Before they come to the site – to assist in planning their time and activities, consider web-based or social media information, or leaflets in Tourist Information Centres. On arrival – consider information in visitor reception areas or car parks. On site – consider warning signs at particular hazards or at the threshold of particular zones.

**Have you met the needs of people with varying levels of mobility?**

---

**ENGLISH HERITAGE PROPERTY ENTRANCE SIGNS**

Important safety information is incorporated using warning pictograms.

---

**SIGNs**

You may need advisory, warning or prohibition signs to tell visitors about things that might have an impact on their visit. However, do not put up signs unless your risk assessment indicates that they are the most appropriate measure for risk control or there is a specific statutory requirement. You may be able to use a better option such as creating a route that avoids the hazard.

When you decide to use signs you must give thought to their content, design, location and maintenance, if they are to be effective.

**Advantages**
- Concise means of conveying information
- Simple pictorial information widely understood
- Relatively cheap to produce and install
- Can be used to warn visitors of hazards that are not readily obvious
- Can be used to remind visitors of hazards

**Limitations**
- Prone to damage and deterioration so require ongoing maintenance
- Can be ignored by intended audience
- Can be obscured by large numbers of visitors
- Limited effectiveness for children
- Limited value for foreign language speakers
- Limited value for the visually impaired
- Visually intrusive in places of historical significance

Some additional points should be noted:
- Poorly designed or badly positioned signs are not effective
- Signs can be used together with other physical measures, such as fencing, and can explain why access is restricted
- There is no need to provide warning signs where the hazard is obvious
- Overuse of signs or leaving old signs in place after the hazard has gone undermines their effectiveness
- The use of signs to disclaim responsibility or liability is not usually appropriate
- Safety advice can often be incorporated into the content of general information panels
- Signs must be regularly inspected and maintained

---

**KEY EXAMPLE**

National Trust play area signs

The National Trust provides areas for adventurous play that allow children to learn about risk. Signs alert adults so that they can better exercise responsibility for children in their care.
**Sign categories and design**

Be consistent in your use of signs. Otherwise the visitor is likely to be misled. Safety signs fall into four categories – prohibition, mandatory, warning, and emergency escape / first aid.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MEANING</th>
<th>DESCRIPTION</th>
<th>EXAMPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition</td>
<td>prohibits behaviour</td>
<td>round shape; black logo</td>
<td><img src="image1" alt="Prohibition Sign" /></td>
</tr>
<tr>
<td>Mandatory</td>
<td>prescribes specific</td>
<td>round shape; white logo on blue</td>
<td><img src="image2" alt="Mandatory Sign" /></td>
</tr>
<tr>
<td>Warning</td>
<td>gives warning of a hazard</td>
<td>triangular shape; black logo (often</td>
<td><img src="image3" alt="Warning Sign" /></td>
</tr>
<tr>
<td>Emergency escape</td>
<td>gives information on</td>
<td>rectangular or square shape; white</td>
<td><img src="image4" alt="Escape &amp; First Aid Sign" /></td>
</tr>
</tbody>
</table>

**SIGN DESIGN**

When you are certain that a sign is needed, decide which category is appropriate. There are standard designs and colours for each category. These are prescribed in the UK by the Health and Safety (Safety Signs and Signals) Regulations 1996. In Ireland, the equivalent legislation is the Safety, Health and Welfare at Work (General Application) Regulations 2007. Although these regulations apply to the safety of employees in work situations, there is great merit in using them, as far as is practicable, for visitor safety signs.

You can use an information board to give a fuller explanation and incorporate other information about, for example, emergency procedures, management strategy, history, conservation or environmental protection.

**SIGN LOCATION**

Give careful consideration to the position of signs. General warning notices need to be seen on arrival by as many visitors as possible. They are usually located at the main points of access to a property. Signs in car parks are best placed at the point where visitors exit on foot to the place of interest. The choice of locations for signs should also take account of the setting and its historical significance.

Warn visitors about hazards in time for them to take in and act on the information. Check them regularly for damage and deterioration. Rectify vandalism and graffiti without delay. Experience shows that if left, it encourages further undesirable behaviour. Remove signs as soon as they become out of date.

**MONITORING & REVIEW**

Observe how people react to signs and notices to ensure that they are in the correct location, understood and acted upon. Even then, you cannot guarantee that all visitors will see signs or take in the information displayed.

**THE ROLE OF EDUCATION**

If your organisation has an education strategy, include visitor safety within the wider educational objectives, particularly when preparing guidance for site visits. Educational opportunities include:

**DIRECT WORK WITH SCHOOLS AND COMMUNITIES**

Work with school and community groups that organise educational activities to historic buildings or sites. Use the opportunity for local staff to explain the guiding principles and emphasise how visitors have some responsibility for their own safety.

Many organisations have prepared hazard information sheets for schools or teachers to assist in preparing their own risk assessments prior to visiting an historic building.

**INPUT TO GUIDED WALKS AND CYCLE TOURS**

Take the opportunity to clarify roles and responsibilities for safety with the organiser of the walk or tour. Use them as a means to safety messages over to the participants.

**WORKING WITH USER GROUPS AND PARTNERS**

Work with user groups and their representative bodies (such as local history or archaeology groups) to understand each other’s position, interests and responsibilities. In turn, these groups can help to get safety messages across to their members. Heritage sites often work together in partnership groups, and there may be opportunities for local campaigns.

**INTERPRETATION**

Try to integrate your strategy for providing safety information for visitors within the overall strategy for interpretation of the site.

Organisations usually provide information to visitors to help them understand and appreciate the history and significance of the historic site they have come to visit. Integrating safety information helps to avoid duplication and unnecessary signage. It places safety within the context of the property. For instance, information on the dangers of unprotected drops could be combined with explanations of how the building, structure or landscape was constructed or adopted.
It is important to have a clear process for reporting and investigating incidents. This should include advice on when to involve insurers or legal advisers after a serious incident.

Incident investigation and reporting are important elements in managing visitor safety. We want our visitors to enjoy their experience and return home unharmed. It is essential to learn from accidents and near misses that do occur. Getting the information, however, is not always that easy. Thousands of visits are made each year to historic sites with free public access that have no staff. Finding out about accidents, learning from them and communicating the lessons is a major challenge.

Why investigate incidents? .................................................. 66
Incident reporting & investigation procedures .................. 66
Figure 7 Incident reporting flow chart .............................. 69
**WHY INVESTIGATE INCIDENTS?**

- to check whether your risk control measures are sufficient and effective
- it may be a statutory requirement (see page 68)
- it is likely to be a requirement of your insurance policy
- to provide information in case there is a claim for compensation or a need to defend a legal action
- to identify trends in the pattern of incidents. This in turn can lead to improved risk controls
- to measure whether your safety record is improving or deteriorating

**COMMON OBSTACLES TO INVESTIGATIONS**

- difficulty in collecting information – this is a major problem for unstaffed sites
- the information provided on accident reports may have insufficient detail
- the condition of the site of the incident can change rapidly, e.g. with weather or subsequent public access; so gather information and take photographs of the site immediately after an incident
- fear of blame – to counteract this, it helps to create a management culture in which staff and visitors are not afraid to report incidents and near misses
- over-complicated reporting systems
- introduce simple and clear systems that minimise paperwork
- staff being unaware of the value of the information they supply. It is essential to give feedback and show how things have changed as a result of incident investigations
- visitors may not know whether or how to report incidents

**Do I need to report an incident?**

Every case needs to be considered on its own merits. Take, for example, a visitor injured and taken to hospital after falling on steps in a garden. If it happened on well-built, even steps in good condition (A), it is doubtful whether it could be attributed to the 'condition of the premises' and it is unlikely that the accident would need to be reported.

If, however, the accident had occurred because steps had become loose due to a failure to inspect and maintain them (B), the condition of the steps would have been a relevant cause and you would have to report the accident. If a slip occurred because the steps had become slippery due to a build-up of algae, the location would be significant. In a heavily visited garden, you might be expected to maintain the steps free of algae (C), whereas in a less-developed woodland garden (D), some slip hazards would be in keeping with the nature of the location, and the way the occupier was managing the site would be less relevant. The low parapet and absence of handrails (D) might also suggest a need to report the slip. If in doubt, you can always discuss the need to report the accident with the enforcing authority.

**INCIDENT REPORTING & INVESTIGATION PROCEDURES**

It is important to have a clear process for reporting and investigating incidents. This should include advice on when to involve competent safety practitioners, insurers or legal advisers after a serious incident. You should also consider whether the incident could give rise to media enquiries and how these would be handled.

You must also ensure that the person who investigates an incident has the necessary skills, knowledge and experience.

Many organisations have specific forms to report incidents and record investigations. Often the two are combined. Typically, they gather the following information:

**BASIC FACTS**

- where the incident happened
- what happened
- date and time
- who was involved
- physical characteristics of the site
- facilities or equipment involved
- activities of those involved
- the weather at the time of the incident (you may also wish to consider details of clothing and footwear being worn at the time)
- the nature of any injuries (actual or potential)
- damage to property or environment (actual or potential)
- what control measures, if any, were in place
- the condition of any control measures

**GATHERING EVIDENCE**

Evidence is critical to establish the causes of incidents and should be gathered before any changes are made to the site and whilst it is fresh in people’s minds. Information to be gathered should include:

- photographs or video recordings of the incident/site
- witness statements
- any damaged equipment or infrastructure

Stick to the facts and avoid giving opinions on fault or blame.

Be careful when asking for statements at the time of the event from witnesses who may be distressed. It might be more sensitive to ask for an address and telephone number and make contact later.

**INCIDENT HISTORY**

The investigator needs to establish:

- has a similar incident happened before?
- were recommendations made to prevent a recurrence?
- if so, were the recommendations carried out?

**CAUSES**

Look beyond the immediate cause of an incident to see if there are important underlying reasons. Often there are several interrelated causes. For example, the immediate cause of an incident might be equipment failure. The underlying cause might be lack of maintenance or a failure to inspect the equipment. That failure may itself have resulted from an underlying cause of lack of training or inadequate supervision.

Take the example of a visitor injured when falling down steps in an historic castle. The immediate cause of the accident might have been that the visitor did not appreciate that the height of the steps was inconsistent. The underlying cause might have been that the depth of the steps was not obvious because of the contrast between bright sunlight and shade (A). Another underlying cause might have been the uneven surface of the steps or the lack of information on site hazards at the point of entry. The lack of a handrail might have made the consequences of the visitor’s inattention more severe (B).
RECOMMENDATIONS

Recommendations are actions to lessen the chances of a similar incident occurring in the future, or to reduce its severity. However, a recommendation could also be made to accept the risk (with the justification recorded) and do nothing. Where recommendations for action are put forward, they should be given a timescale for implementation.

REVIEW

There should be a review to see if the recommended actions have been taken and to assess whether they were adequate and appropriate.

REPORTING TO THE ENFORCING AUTHORITY

Certain types of accidents to employees and members of the public must be reported to the relevant enforcing authority — this is a requirement in the UK under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR 2013). If a member of the public is killed or is taken directly to hospital following an incident connected to your work you must notify the enforcing authority without delay, most easily by reporting online. Similar requirements in Ireland (with some slight differences) are covered by the Safety, Health and Welfare at Work (General Application) Regulations, 1993. The “enforcing authority” is usually the environmental health department of your local authority, the Health and Safety Executive in Great Britain, the Health and Safety Authority in Ireland, the Health and Safety Executive for Northern Ireland or the Health and Safety at Work Inspectorate in the Isle of Man.

You do not have to notify the enforcing authority in every instance when a visitor is injured on your property and is taken to hospital for treatment. The injury must have arisen out of or in connection with your work or undertaking or the condition of your premises.

Your undertaking may well include the provision of recreation opportunities and access to the historic built environment for members of the public. ‘Premises’ has a wide meaning. It could be property like a castle, church, stately home, garden or park. It encompasses facilities such as toilets, play areas, woodland walks and car parks. It can include canal towpaths and river banks, harbours and jetty. It includes infrastructure such as roads and footpaths, locks, bridges and tunnels.

Even if you do not need to report an incident to the enforcing authority, you may be required to notify your insurer. You should also always investigate serious incidents.

KEEPING RECORDS

It is a legal requirement (under RIDDOR) to keep a record of any incident reported to an enforcing authority. This must include the date and method of reporting, the date, time and place of the event, personal details of those involved, nature of the injury and a brief description of the circumstances of the incident. It is important to record all other significant incidents and near misses (even if not reported). The information may be essential to answer compensation claims and deal with legal or insurance concerns.

References and further information

The Health and Safety Executive, the Health and Safety Executive for Northern Ireland and the Health and Safety Authority in the Republic of Ireland provide detailed information on their web pages about the legal requirement to report incidents. They include recommended ways to make reports, including online submissions.

http://www.hse.gov.uk/riddor/index.htm
for England, Scotland and Wales

http://www.hsa.ie/eng/Topics/Accident_and_Dangerous_Occurrence_Reporting/for Northern Ireland

http://www.hse.ie/eng/Topics/Accident_and_Dangerous_Occurrence_Reporting/for Ireland


Figure 7 Incident reporting flow chart

AN ALLEGED INCIDENT OCCURS INVOLVING A MEMBER OF THE PUBLIC ON YOUR PROPERTY...

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>was the incident associated with work?</td>
<td>Yes</td>
</tr>
<tr>
<td>was the incident reported by the injured person or a reliable witness?</td>
<td></td>
</tr>
<tr>
<td>was the incident directly witnessed by a member of staff?</td>
<td>Yes</td>
</tr>
<tr>
<td>do you have any other evidence to verify the alleged incident?</td>
<td></td>
</tr>
<tr>
<td>has anyone died or been taken to hospital for treatment as a result?</td>
<td>Yes</td>
</tr>
<tr>
<td>was the incident a result?</td>
<td>YES</td>
</tr>
<tr>
<td>has anyone died or been taken to hospital for treatment as a result?</td>
<td></td>
</tr>
<tr>
<td>has anyone suffered any other type of injury?</td>
<td>YES</td>
</tr>
<tr>
<td>has there been any damage to property?</td>
<td>YES</td>
</tr>
</tbody>
</table>

IMMEDIATELY NOTIFY

- ENFORCING AUTHORITY
- YOUR LINE MANAGER
- YOUR SAFETY ADVISER

AND

COMPLETE INTERNAL INCIDENT/ACCIDENT REPORT FORM AND KEEP A COPY OF THE REPORT FOR AT LEAST THREE YEARS

KEY EXAMPLE

A visitor to an historic ruin in open countryside trips and falls on naturally occurring rocks in the vicinity of the ruin, breaking their leg.

- **X No**
  - The ruin is located in rugged natural terrain. Visitors should be prepared for the environment and should wear suitable clothing and footwear. They should take account of their own fitness and limitations.

A visitor to the formal garden of an historic house falls from a platform protected by a low parapet, breaking their leg.

- **Yes**
  - This is a busy, intensively managed attraction. The existence of the partly protected drop should be covered by the risk assessment. The accident could be attributable to the way the attraction is managed.

Do I need to report an incident to the enforcing authority? Note that the need to report does not necessarily mean that the accident has involved a breach of the law.

- **X No**
  - For your undertaking to be regarded as involving premises or property for insurance purposes, the definition of premises in the Health and Welfare at Work (General Application) Regulations, 1993. The ‘enforcing authority’ is usually the environmental health department of your local authority, the Health and Safety Executive in Great Britain, the Health and Safety Authority in Ireland, the Health and Safety Executive for Northern Ireland or the Health and Safety at Work Inspectorate in the Isle of Man.

- **Yes**
  - For your undertaking to be regarded as involving premises or property for insurance purposes, the definition of premises in the Health and Welfare at Work (General Application) Regulations, 1993. The ‘enforcing authority’ is usually the environmental health department of your local authority, the Health and Safety Executive in Great Britain, the Health and Safety Authority in Ireland, the Health and Safety Executive for Northern Ireland or the Health and Safety at Work Inspectorate in the Isle of Man.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>the condition or design of your premises/ facilities/infrastructure?</td>
<td></td>
</tr>
<tr>
<td>has anyone died or been taken to hospital for treatment as a result?</td>
<td></td>
</tr>
<tr>
<td>has anyone injured on your property and is taken to hospital for treatment?</td>
<td></td>
</tr>
<tr>
<td>has there been any near miss or other evidence?</td>
<td></td>
</tr>
<tr>
<td>has there been any near miss or other evidence?</td>
<td>YES</td>
</tr>
</tbody>
</table>

Figure 8 Incident reporting flow chart

PRACTICE
Planning for the full range of possible emergencies is an important aspect of managing safety.

How do we decide whether there is an emergency? What triggers an emergency plan? How do we deal with situations so that an emergency is prevented through contingency planning? For example, do you need procedures for managing risk in bad weather? How would you deal with an accident in which a visitor falls into an inaccessible place and is injured? This chapter sets out why you need to plan for emergencies and explains how to go about it.
PLANNING FOR EMERGENCIES

If your safety plan is in place and being followed, the potential for emergency situations will be reduced. However, even with good planning and sound management, emergencies will still occur, sometimes as a result of events outside your control or the actions of visitors, and sometimes due to the failure of your own procedures. Therefore you should ensure that emergency procedures are in place, practised and understood.

In the UK and Ireland, we have become accustomed to such good public emergency services that we may fail to plan or train adequately for emergencies. It is only when a situation arises that we are faced with emergencies that we are not prepared for. Effective emergency procedures will help you to manage the situation until the emergency services arrive, and will make their intervention more effective. Effective emergency procedures will enable your staff and volunteers to:

- ensure the prompt involvement of the emergency services
- help sustain life and prevent further injury whilst waiting for help to arrive
- take action to contain any hazardous situations
- prevent access by staff, volunteers and the public to hazardous areas or situations
- prevent or minimise damage to property
- prevent or minimise damage to the environment
- implement an evacuation plan if necessary in the circumstances

Effective emergency procedures

Planning for the full range of possible emergencies is an important aspect of managing safety. You should consider:

- serious accidents or illness to staff, volunteers or visitors
- incidents that could lead to serious injury including, for example, people becoming trapped in a building
- effects of severe weather conditions like snow/ice, flooding, landslips or falling trees
- fire involving buildings
- serious pollution
- chemical contamination
- unplanned ordnance
- bomb threats and other security-related incidents
- serious criminal activity (including vandalism)
- lost children

You should learn from incidents and ensure that emergency procedures and evacuation plans are in place, practised and understood.

FORESEEABLE EMERGENCIES

Preparation of emergency procedures

To ensure that your preparation and planning are properly understood and likely to be effective when required, you should:

- Prepare a written set of procedures to deal with foreseeable emergencies for every site. The document must be workable and comprehensive, yet made as simple as possible and easy to read.
- Where appropriate (e.g. for complex sites, sites with high visitor numbers or sites with specific hazards), liaise with the emergency services when preparing the procedures. Check what information the emergency services actually need (e.g. postcodes or grid references).
- Ensure the procedures are made available to staff and volunteers likely to be involved in dealing with an emergency, and provide them with training, if necessary.
- Where appropriate, explain the procedures to visiting groups.
- Prepare prompt sheets listing important information to be passed to the emergency services, and keep them at suitable positions.
- Practise your emergency procedures.
- Review the effectiveness of your response to a practice or real emergency, learn any lessons and revise your procedures, if necessary.
- Review the procedures regularly.

Emergency procedures should normally be written down, clearly setting out the limits of actions to be taken by employees (and volunteers). Information on these procedures should be made available to all employees, and where necessary to other workers and their employers. Induction training should cover emergency procedures and should help to familiarise employees with those procedures.

Foreseeable emergencies

The Regulatory Reform (Fire Safety) Order 2005 covers general fire safety in England and Wales. In Scotland, requirements on general fire safety are covered by the Fire (Scotland) Act 2005 supported by the Fire Safety (Scotland) Regulations 2006. In Northern Ireland, the relevant legislation is the Fire and Rescue Services (Northern Ireland) Order 2006, reinforced by the Fire Safety Regulations (Northern Ireland) 2010.

In Ireland, there are a number of applicable pieces of legislation under statute law which place specific responsibilities on the employer, such as the Cinematographic Film and Television Act 1998 and the Building Control Act 1990 & 2007.

In the majority of premises, local fire and rescue authorities are responsible for enforcing this fire safety legislation.

EXTRACT FROM ‘FIRE RISK MANAGEMENT IN HERITAGE PROPERTIES’, FIRE PROTECTION ASSOCIATION, 2014

An important guidance booklet was published by the Fire Protection Association in 2014 – “Fire risk management in heritage properties”. This provides a succinct summary of the risk of fire in heritage buildings.

“The range of heritage properties is enormous with immense differences in scale, complexity and construction. Built with little or no concern for fire, heritage buildings are often more vulnerable to fire and its effects than new build.

Their vulnerability to fire also varies considerably as each building is unique and may be vulnerable in its own distinct manner requiring individual assessment and, if necessary, precautionary measures. As with other performance criteria, a building’s performance in fire cannot be compared directly with any other building: there are huge variations in the scale, complexity, construction, materials, fire load and fire risk between buildings. The use and occupancy of heritage buildings may also produce special circumstances.”

You should learn from incidents and ensure that emergency procedures and evacuation plans are in place, practised and understood.

Clandon Park, Surrey
There is also useful information on emergency planning for events on the Health and Safety Executive’s website at:

The requirements in Ireland for emergency escape and fire fighting are on the Health and Safety Authority’s website at:

For information on use of defibrillators: https://www.bhf.org.uk/~/media/files/hcps/aed_guide_final-17_12_13.pdf


buildings.pdf/

http://www.environ.ie/en/Publications/Community/FireandEmergencyServices/

by training staff

by ensuring that all of the fire safety

by working to prevent fires in the first

by making sure that the fire safety

A case study of the way in which the

National Trust has responded to the

requirements of the Regulatory Reform (Fire Safety) Order 2005 through fire

risk assessment at Lanhydrock House, Cornwall is included in the list of

references and useful links.

POST EMERGENCY REPORTING AND INVESTIGATION PROCEDURES

If possible, do not change anything at the scene until investigators have seen it. If you have to make changes, keep a record of the circumstances and take photographs beforehand.

Consider whether you have a legal requirement to report a fatality, injury or dangerous occurrence to your enforcing authority (this is covered in more detail in chapter 6).

Consider whether your insurance requires you to send a report to your insurers.

Your own organisation should have established procedures for internal reporting and dealing with insurance claims.

Check the safety of any structures, external features such as fences and bridges or internal fittings such as stairs, handrails and bannisters that may have been damaged in the emergency. Trees may have been affected by high winds. You may need to involve specialists such as building surveyors or tree surgeons.

Lessons can be learnt from any emergency situation. It is worth preparing a report containing details of the emergency and the action taken to deal with it as soon after the incident as practicable. Any failings in the emergency procedures should be identified and changes made. Share your findings with others who might benefit.

FIRST-AID FOR VISITORS

Although there is no legal requirement to provide first-aid for visitors, it is a good practice to assess the need for it. At staffed historic properties open to the public, there would be a public expectation that first-aid equipment and cover would be available if needed.

DEFIBRILLATORS

It is becoming increasingly common for defibrillators to be installed in public places. There is no legal requirement to do so, and it is for each organisation to decide its own policy on acquiring and installing them. Some organisations leave it to individual properties to decide whether to invest in this equipment based on an assessment of first-aid needs, taking account of factors such as visitor numbers, numbers of qualified first-aiders and typical emergency service response times. Over time, defibrillators have become cheaper to install and easier to use. In some cases they have been located at historic properties as part of a community resource in rural areas.

References and useful links


The requirements in Ireland for emergency escape and fire fighting are on the Health and Safety Authority’s website at: http://www.hsa.ie/eng/Topics/Fire/Emergency_Escape_and_Fire_Fighting/

There is also useful information on emergency planning for events on the Health and Safety Executive’s website at: http://www.hse.gov.uk/eventsafety/incidents-and-emergencies.htm

Wells Cathedral emergency procedure

The cathedral’s emergency procedure was tested in 2014 when a woman on a guided ‘high parts tour’ fell 10 metres and was trapped in a void, near the roof of the tower.

In a complex, multi-agency rescue, supported by South Western Ambulance Service’s hazardous area response team, was lowered into the void.

Avon & Somerset Search and Rescue, an emergency service trained to work in high and difficult locations, was also brought in to assist by the police force incident manager.

Devin and Somerset Fire Service’s specialist rescue team then hoisted the patient back up the narrow spiral staircase onto the tower roof.

She was winched from the roof and taken to hospital by a Sea King helicopter from the RAF Search and Rescue Service.

Index of contents for emergency procedures

Roles and responsibilities of key members of staff and volunteers.

Equipment needed: This might include first-aid materials, equipment for fire-fighting and rescue tools. The selection of equipment will depend on the location and the nature of foreseeable emergencies.

Means of communication. Provision of radios and training of users. Awareness of the location of public and private telephones that can be used in an emergency. Awareness of mobile phone signal strength.

Protective clothing and equipment for staff and volunteers.

Means of transport (consider training of users, for example in driving vehicles).

First-aid expertise. Do you have enough qualified first-aiders to respond to anticipated emergencies?

Advanced courses are available from a range of providers.

The likely response time of the emergency services.

Access points and routes. Prepare a map giving access details for the emergency services. Use accurate grid references.

Locations of any special hazards, such as overhead power lines, bridge weight limits (highlight hazards on a map).

Location of emergency water supplies for fire-fighting and firefighting equipment for use.

Liaison with the emergency services. Invite their involvement in practice drills.

Liaison with tenants and neighbouring land owners.

List of staff to notify in an emergency.

Notification of external organisations, such as the Environment Agency.

The need to exclude the public, and, if necessary, the means to prevent public access to areas of danger, using barriers and/or warning signs.

Procedures for dealing with the media.
Legislation places a duty on employers to ensure, as far as is reasonably practicable, that in the course of conducting their undertaking, members of the public are not put at risk.

This chapter looks at the legislation and court judgements that affect visitor safety and outlines your responsibilities under the law. The principles apply to all countries in the United Kingdom and in the Republic of Ireland, although the legal duties may be imposed by different legislation. It can only provide a broad overview of the law and should not be a substitute for proper legal advice which may be necessary to answer specific circumstances.

Your legal duties

Criminal law

Civil law
In understanding how the law operates in the UK and Ireland, it is important to distinguish between criminal law and civil law.

Under common law, organisations and individuals have a duty of care to each other or third parties, which may be imposed by their activities. Where something goes wrong, individuals may, in some cases, sue for damages using the civil law if they are injured as a result of another person’s negligence. But, for a negligence claim to succeed, the injured person must show that the defendant had a duty to take reasonable care towards them, and they have suffered the injury through a breach of that duty. The injured person must also show that the type of loss or injury for which damages are being claimed is a foreseeable result of the breach of the duty.

Liability in individual cases is a matter for the courts, depending on all the circumstances of the case and the actions and standards it is reasonable to expect from each of the parties involved. If the court decides that a particular claim does not have merit, then it will reject it. It can also reduce any damages awarded to reflect the extent of any contributory negligence on the part of the injured person.

In the UK, responsibility for the enforcement of health and safety legislation rests with the Health and Safety Executive and local authorities. In the Republic of Ireland, the Health and Safety Authority carries out a similar role to HSE. In the Isle of Man, the role is fulfilled by the Environment, Health and Safety Directorate. In all countries, inspectors have powers to investigate serious incidents or carry out routine inspections. When there has been a breach of health and safety law, the enforcing authority can prosecute or serve improvement or prohibition notices.

The Margate caves were leased and operated as a tourist attraction until 2004 when a prohibition notice was served on Thanet District Council by the Health and Safety Executive in September 2004. A specialist inspection of the caves revealed that the entrance and main passageway had been poorly maintained, jeopardising safe means of escape. There were possible structural problems that could have resulted in a collapse without warning, trapping and injuring people inside. Since the caves have remained closed since then due to funding problems.

In the UK, under Section 37 of the Health and Safety at Work etc. Act 1974 (HSWA) and regulations made under it, this Act applies in England, Wales and Scotland. In Northern Ireland, the equivalent legislation is the Health and Safety at Work (Northern Ireland) Order 1978 (subordinate regulations are adopted in Great Britain). In the Republic of Ireland, the equivalent legislation is the Safety, Health and Welfare at Work (General Application) Regulations 2007. In the Isle of Man, the Health and Safety at Work Act 1977 is in place. This is the means by which the UK 1974 Act has been adapted and applied to the island.

Not only organisations but also individuals can be held liable in a criminal court for not complying with legal duties imposed by government legislation. You can be fined, or even face imprisonment if found guilty in a criminal court.

This legislation places a duty on employers to ensure, as far as is reasonably practicable, that in the course of undertaking their duties, members of the public are not put at risk. The phrase “reasonably practicable” is defined by the 1949 Court of Appeal decision in the case of Edwards vs National Coal Board (1).

In the UK, responsible for the enforcement of health and safety legislation rests with the Health and Safety Executive and local authorities. In the Republic of Ireland, the Health and Safety Authority carries out a similar role to HSE. In the Isle of Man, the role is fulfilled by the Environment, Health and Safety Directorate. In all countries, inspectors have powers to investigate serious incidents or carry out routine inspections. When there has been a breach of health and safety law, the enforcing authority can prosecute or serve improvement or prohibition notices.

In understanding how the law operates in the UK and Ireland, it is important to distinguish between criminal law and civil law.
The Management of Health and Safety at Work Regulations 1999 (see footnote 8 for equivalent regulations in Northern Ireland, the Republic of Ireland and the Isle of Man) require you to carry out risk assessments to identify hazards and take any necessary steps to reduce the risk of an accident. Regulation 3(1)(a) states that:

“Every employer shall make a suitable and sufficient assessment of the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking”. 

In effect, this means that your risk assessments should consider the risks to visitors you invite onto your property, or other people who might be affected by your undertaking or your activities.

It is particularly important to document the rationale and justification for the decisions in your risk assessment, if your conclusion is to do nothing further to protect a hazard.

Regulation 5 states: “Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of his preventive and protective measures.” Where the employer employs five or more employees, the arrangements should be recorded. We discuss how you can meet these requirements in Chapter 4.

MINES AND QUARRIES ACT 1954, QUARRIES REGULATIONS 1999

This legislation would still be relevant to some historic parks and landscapes. A quarry, whether or not it is being worked, is a mine, which because of its accessibility, constitutes a danger to the public, should be efficiently closed off and the closure properly maintained. This duty does not extend to mines (other than coal mines) which have not been worked since 1872.

R V MERLIN ATTRACTIONS LTD

In December 2007, an elderly visitor to Warwick Castle was walking across the Bear and Clarence Bridge, a pedestrian route crossing the dry moat. The bridge was about 3 metres wide and 14 metres long with low parapet walls only 0.4 metres high. As he was crossing the bridge, the visitor stumbled and fell over the parapet, falling about 4 metres into the dry moat below and sustaining fatal head injuries.

Charges were brought by Warwick District Council under the Health and Safety at Work Act against Merlin Attractions Ltd., the company operating Warwick Castle. Merlin Attractions Ltd. was accused of failing to take suitable and sufficient measures to prevent visitors falling from height when entering or leaving the castle via a bridge, in that the Castle failed to provide a barrier to protect visitors from falling from the bridge, failed to post warning signs, failed to ensure adequate lighting, and failed to carry out a suitable risk assessment. Merlin Attractions Ltd. defended the charges at the trial in April 2012.

This was considered to be a finely balanced case and to achieve a conviction, the local authority prosecuting needed to convince the jury that the bridge posed a “material risk”.

Warwick District Council strongly believed that the fall height from the bridge was “masked” by trees and bushes in the dry moat. The tops of this vegetation extended above the parapet walls on the bridge. It appeared that the extent of the fall height was not readily obvious to visitors leaving the castle.

Evidence was also brought that the hazard of the bridge had been identified in a previous application for a public entertainment licence, and as part of a structural assessment. On the other hand, it appeared that health and safety officers at the castle did not consider that the bridge posed a hazard, and therefore no formal risk assessment was completed.

Merlin Attractions defended the case on the basis that there was no “material risk.” It argued that approximately 20 million people had visited the Castle since 1975 and there had been no recorded accidents or near misses at the bridge. Further, health and safety inspectors had undertaken regular audits of the castle for a 30 year period before the accident but they had never warned the castle that the bridge posed a fall from height risk. Merlin judged that the bridge posed a negligible and hypothetical risk, and what the public would expect in everyday life. The bridge, including the dry moat, is a scheduled ancient monument and could not be permanently altered without detailed consent from English Heritage.

The issue of “material risk” was explored in great detail. Merlin challenged the prosecution case that there was a foreseeable material risk, arguing that the Council’s view relied solely on hindsight.

Merlin tried to introduce evidence of similar structures in the UK with low parapet walls, in an attempt to invite the jury to make comparisons. The prosecution was concerned that if this evidence was admitted, the jury would be faced with a decision of convicting and destroying their heritage or acquitting and preserving it. The judge ruled that most of the evidence relating to other similar structures and ancient monuments was inadmissible on the basis that there was no accompanying knowledge of what risk assessments had been done at these other locations.

The case concluded on 24th April 2012. Merlin Attractions Ltd. was found guilty on two charges – one under Section 3 of the Health and Safety at Work Act (fined £300,000), and one under the Management of Health and Safety at Work Regulations (fined £50,000). Costs of £145,000 were also imposed. A subsequent appeal against the size of the fine was unsuccessful.

Warwick Castle, Bear and Clarence Bridge

Following the conclusion of the case, HSE issued a statement in August 2012, which was published on the VSCG web site. It reads:

HSE STATEMENT

Visitor safety at historical sites and similar attractions

The recent prosecution of Merlin Entertainments following a fatal accident at Warwick Castle has prompted concerns from a number of organisations managing historical sites and other similar visitor attractions. HSE has been asked for clarification on the steps these organisations have to take to ensure that the risks to their visitors are properly managed. Particular attention has been drawn to the issue of fencing or providing guard rails to prevent falls at historic castles, ruins and monuments.

The investigation carried out by Warwick Council found that Merlin Entertainment had not properly assessed or managed the risks to the public crossing a bridge over a dry moat. Consequently, effective steps were not taken to manage the risk of visitors falling over the low parapet. The investigation also concluded that the 1.4 ft drop was not obvious to visitors due to the surrounding environment and low light levels. The jury agreed with the prosecution, delivering a guilty verdict.

With regards to visitor safety, decisions on the suitability and sufficiency of actual risk control measures will inevitably be location specific. These must be based not just on an adequate identification of the hazards, but consideration of the likelihood that these hazards will cause harm. In addition the assessment upon which they are based should also consider how environmental conditions such as poor light and inclement weather affect the level of risk, and how this will be dealt with.

HSE recognises that it is not always possible to ensure there are no risks to visitors. In historic places and other such attractions measures taken to control risks may have to be balanced with other factors such as conservation and peoples’ freedom to explore. It is also reasonable to expect that once operators have taken appropriate steps to manage risk that visitors will take some responsibility for their own safety, for example, taking account of warning signs, acting reasonably and supervising children in their care.

Whilst physical safeguards such as fencing or installation of guard rails will be appropriate in certain circumstances to prevent falls, there are other measures which owners may take to reduce risk to an acceptable level which do not spoil the aesthetic value of the location or visitor experience. For example planting prickly bushes to deter visitors approaching open edges, or conversely removing vegetation which obscures hidden drops. It is also important to provide advice, information and warning to visitors to properties so they can make informed decisions regarding their activities.

The Visitor Safety in the Countryside Group (VSCG), which represents many of the major organisations in this sector, states that “it is possible to protect and enhance our landscapes and historic properties, encourage public access and achieve levels of risk that are acceptable to society”. Their publication ‘Managing Visitor Safety in the Countryside – principles and practice’ provides guidance to owners and managers on assessing risks and implementing bespoke risk control measures which are sensitive to the environment and the duty to conserve the natural and built environment, and which will not unduly restrict access to important historic, cultural and recreational sites.

HSE supports this guidance as a sensible and proportionate approach to visitor risk management.
CIVIL LAW

Someone injured through your negligence can bring an action for damages against you in a civil court of law. If you are found negligent, you may be ordered to pay compensation for loss of earnings, medical expenses, pain, suffering and the like.

Claims for damages after accidents are perceived to be on the increase, with solicitors and accident claim practitioners touring for new business by offering ‘no win no fee’ terms. Concern about the growth of a ‘compensation culture’ led to the introduction of the Compensation Act in 2006. This brought in changes to the law on liability and breach of statutory duty to tackle perceptions that can lead to a disproportionate fear of litigation and risk-averse behaviour. Despite this, Lord Young stated within his 2010 report “Common Sense, Common Safety” (10) that the problem of the compensation culture prevalent in society today is one of perception rather than reality. The number of claims for damages due to an accident or disease has increased slowly but nevertheless significantly over recent years. Furthermore, there is clear evidence that the public believes that the number of claims and the amount paid out in damages have increased significantly over recent years. As a result, there is a concern that the cost of claims and insurance premiums are rising significantly. In April 2013, the Government brought in reforms to civil litigation funding and costs in England and Wales as part of the work to meet the recommendations in Lord Young’s report.

The foundation of most personal injury actions is in proving negligence under the common law. An action for damages is brought in the civil court.

To win an action and be awarded compensation the injured person must be able to demonstrate that they were owed a duty of care, and there was a breach of that duty leading to the injury. A civil case can also be brought for breach of statutory duty that results in injury.

Common law duties essentially derive from decisions made by judges over the years. Under common law you owe someone a duty of care if there is:

- sufficient proximity between you and the person injured, and it was reasonable to foresee that harm may result from your actions, and
- it is fair, just and reasonable to impose a duty of care on you.

Proximity can be geographical, contractual, or through a care situation (for example between teacher and child). If you breach that duty of care, and foreseeable physical or psychological damage results, then you are liable to negligence. An employer may be held liable for the negligence of his employees (this is called vicarious liability). (11)

The visitor must take reasonable care for his own safety. If he doesn’t and comes to harm, then his ‘contributory negligence’ would reduce the value of any claim against you.

Note that children cannot be expected to appreciate dangers in the same way as adults. It is highly unlikely that contributory negligence could be attributed to the actions of a very young child. Adults, however, will be expected to exercise responsibility for children in their care.

In civil law, the duty of care has been further defined by legislation. Under the Occupiers’ Liability Acts of 1957 (OLA57) and 1984 (OLA84), the occupier of premises owes a duty of care to lawful visitors (OLA57) and trespassers (OLA84), by reason of the state of the premises and things done or omitted to be done on them.

In Scotland, a similar duty of care is owed under the Occupiers’ Liability (Scotland) Act 1960. In Northern Ireland, the relevant legislation is the Occupiers Liability Act (Northern Ireland) 1957 and the Occupiers Liability (Northern Ireland) Order 1987. The legislation in the Republic of Ireland is the Occupiers’ Liability Act 1995. The Isle of Man has the Occupiers’ Liability Act 1964.

‘Premises’ includes buildings, land, and “any fixed or moveable structure, including any vessel, vehicle or aircraft.” Bodies of water on the land, (such as lakes, ponds and canals) can also be ‘premises’, as can be waters in a harbour (12).

The ‘occupier’ is the person or body that has sufficient control over the premises to be in a position to take the steps necessary to protect people who otherwise may be at risk.

An occupier may have some liability for an accident on adjacent premises. If the occupier is aware of a danger on adjoining land that is not readily apparent to a visitor, and if there is ready access from the occupier’s land, the occupier may have a duty to prevent the visitor straying into danger (13).

If you own and are in sole possession of the premises you are clearly the occupier. If you hand over the premises and retain control over the latter person may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor’s activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon.”

In the event of an accident, the occupier will need to demonstrate that his actions were reasonable in the circumstances. Occupiers have been found liable in various ways, for example in failing to light stairs (14), for placing a diving board over shallow water (17), and for failing to clear litter, over which a visitor tripped (18).

There have also been significant cases where occupiers have been found to be not liable.

HEAVES v WESTMEATH COUNTY COUNCIL

The plaintiff had visited the grounds of Belvedere House in Westmeath in Ireland in the summer of 1998 and had paid an admission fee. When descending a set of rustic steps, the plaintiff slipped and fell, injuring his right elbow. The steps in question were somewhat uneven in nature. The right hand side had an uneven border of rocks and bushes, and the steps were partly covered with lichen and moss. The plaintiff’s engineer suggested that the steps might have been cordonned off or a warning notice might have been placed at the head of the steps to alert visitors. He further suggested that the steps could have been made less hazardous had a handrail been placed on that side of the stairs where the wall bordered the steps.

The defendant claimed that there was a robust system of inspection and maintenance in place. In addition, the premises in question were listed premises and it was not permitted to make structural alterations without permission, due to the historical importance of the buildings. This was deemed to be of significance. The Judge concluded that the precautions the defendant had taken in all the circumstances were reasonable. Furthermore, he found the absence of a warning sign was not fatal to the defendant’s case.

He found that the plaintiff was in full possession of all the requisite knowledge that a warning notice, had there been one there, would have given him. In the circumstances, he did not conclude that the absence of such a notice in anyway contributed to the plaintiff’s injury. In summing up he said there was no failure on the part of the defendant to discharge its statutory duty to take reasonable care in respect of dangers existing on the premises. The action was dismissed. (19)
You must consider the particular needs of people you invite onto your property.

A council was at fault when an elderly person was injured tripping on an uneven path leading to a council building. It was of particular importance that the path was used by many elderly people who were likely to trip with potentially serious consequences. The pathway could easily and cheaply be rectified by pointing and re-laying. (20)

You must be able to demonstrate that you have taken reasonable precautions.

A visitor slipped and was injured on a sloping pathway at a school following a heavy snowfall. The judge was entitled to take into account the subsequent installation of a handrail in concluding that the path needed special treatment. Even though the path had been cleared and gritted before the accident, this was insufficient, given the conditions at the time and the nature of the path in question. (21)

The historic nature of the premises can be relevant:

A custodian at Pendennis Castle fell when descending external granite steps in broad daylight. The steps, constructed in about 1540, had a gulley cut into them as a channel for rainwater. They were not defective but their design would not conform to modern building standards. The Historic Building and Monuments Commission for England had discharged their duty as occupiers of the ancient building by keeping the steps free from defect and not obfuscating the channel, which was an obvious feature.

Although OLA 57 prescribes a standard of care which applies to all premises, the court was required to look at "all the circumstances of each case". The antiquity of the building was such a circumstance. Hadrian's Wall was not to be judged of each case'. The antiquity of the building was not to be judged of each case'. The antiquity of the building by comparison with the isolated single case of a fall in the area of the sunken drain, but even if she did we do not require the construction of immaculate walkways round our ancient buildings in case someone falls because they have not looked sufficiently carefully where they are going. It would be highly undesirable if we required the appearance of our medieval country churches to be infected by warning notices. Such an attitude would offend anyone's sense of 'reasonableness' and proportionality – taking into account the cost of such remedial work and the damage to the aesthetic features of the building by comparison with the isolated single case of a fall in broad daylight by a claimant who could see the obstacles, if any, in her immediate vicinity." (23)

In March 1999 a woman fell and injured herself while attending a wedding at St Botolph's Church, Saxilby, Lincolnshire. She alleged that the cause of her accident was a misplaced drain cover. However, the claim failed due to a finding of fact. However, the judge considered the issues raised by case of Tomlinson v Congleton Borough Council (26). He said:

"It is, of course, perfectly possible for a visitor to a church to fall; for example because a high heeled shoe gets caught in the gravel of a church drive or they may trip against a raised grass verge and fall. Such accidents do occur but do not give rise to the liability of the occupier. I am not satisfied that the claimant did fall in the area of the sunken drain, but even if she did we do not require the construction of immaculate walkways round our ancient buildings in case someone falls because they have not looked sufficiently carefully where they are going. It would be highly undesirable if we required the appearance of our medieval country churches to be infected by warning notices. Such an attitude would offend anyone’s sense of ‘reasonableness’ and proportionality – taking into account the cost of such remedial work and the damage to the aesthetic features of the building by comparison with the isolated single case of a fall in broad daylight by a claimant who could see the obstacles, if any, in her immediate vicinity." (23)

In June 2006, a visitor to Ripon Cathedral suffered an ankle injury when stepping in a depression on a step leading to the Crypt. The visitor took the Cathedral to court to claim for damages but the judge ruled in favour of the Cathedral, finding them not liable.

To protect visitors, the Cathedral had taken the following precautions:
- a risk assessment of the area had been completed and found there was no significant danger
- the area was well lit
- a one-way system was in operation to guide visitors
- signage was present to guide people along the one-way system

The court found that:
- in view of the narrow width of the walkway, installing a handrail was not necessary
- no additional signage was required to warn about the danger of injury
- the steps free from defect and not obfuscating the channel, which was an obvious feature.

Hardwick Hall is a National Trust property in Derbyshire. It includes a large country park, which is a popular attraction for the large urban population nearby. Within the park are two large lakes, and five small ponds. These ponds are roughly square in shape, approximately twenty metres across and, in places, over two metres deep. The ponds are used for licensed fishing. In August 1997, a forty-five year old father, on a family day out, went into one of the ponds to swim and drowned.

After the accident, the widow began civil proceedings against the Trust for compensation. The case (heard in March 2000) concerned the Trust’s duties under the Occupiers’ Liability Act 1957 to warn against and to take steps to prevent swimming in the pond. The claimant received expert advice, claiming that the pond was unsuitable for swimming and that there should have been a strategy in place to prevent swimming. In the absence of such a strategy and suitable warnings, the judge decided that the accident was mainly attributable to the Trust’s failings, and awarded substantial compensation. The Trust took the case to the Court of Appeal in January 2001 (25).

The court overturned the original decision, adopting a common sense view that people should take proper responsibility for their own actions. The logical extension of the claimant’s argument was that the entire coastline and all inland water sites would need ‘no swimming’ signs. The Court decided that apart from the water being deep and murky, there were no additional dangers involved in swimming in this pond. As a result, no warning sign was needed. In reaching this decision, the Court developed the approach taken in Staples v West Dorset District Council (27), in which it was decided that a landowner is not under a duty to warn visitors about risks that are obvious.

In September 2001 the claimants were refused leave to appeal to the House of Lords.
A subsequent case, which went to the House of Lords (Tomlinson v Congleton Borough Council [2006]) (26) has further clarified the extent of an occupier’s liability. The judgement is considered one of the most significant in recent years and it has been frequently cited in subsequent civil cases.

### TOMLINSON v CONGLETON BOROUGH COUNCIL

**Brereton Heath Country Park**

An attractive lake bordered by sandy beaches forms the centerpiece to Brereton Heath Country Park, Cheshire. Families visit the park to play on the beach. It was common for people to swim in the lake, ignoring the Council’s ‘no swimming’ signs and the advice of park rangers. Mr Tomlinson ran into the water up to his knees and plunged forward. He stuck his head on the sandy bottom of the lake, breaking his neck, and was rendered tetraplegic.

The case examined the liability of the Council under OLA57 and in respect of dangers due to the state of the premises or things done or omitted to be done on them.

The judges found that there was nothing about the mere at Brereton Heath which made it more dangerous than any other ordinary stretch of open water in England. There was nothing special about Mr Tomlinson’s configuration; there were no hidden dangers. There were no edges and deeps in others, but that is the nature of lakes. Nor was the council creating anything to be done which created a danger to persons who came to the lake. No power boats or jet skis threatened the safety of either lawful windsurfers or unlawful swimmers. It seems that Mr Tomlinson freely and voluntarily undertaking an activity which inherently involved some risk.

Lord Hoffmann observed: “The risk was that he might not execute his dive properly and so sustain injury. Likewise, a person who goes mountaineering incurs the risk that he might stumble or misjudge where to put his weight. In neither case can the risk be attributed to the state of the premises. Otherwise any premises can be said to be dangerous to someone who chooses to use them for some dangerous activity.”

Even if the risk had been attributable to the state of the premises the question of what amounts to “such care as in all the circumstances of the case is reasonable” depends upon assessing, as in the case of common law negligence, not only the likelihood that someone may be injured and the seriousness of the injury which may occur, but also the social value of the activity which gives rise to the risk and the cost of preventative measures. These factors have to be balanced against each other.

It is necessary to take into account the social value of the activities which would have to be prohibited in order to reduce or eliminate the risk from swimming. “The majority of people who go to the beaches to sunbathe, paddle and play with their children were enjoying themselves in a way which gave them pleasure and caused no risk to themselves or anyone else. This must be something to be taken into account in deciding whether it was reasonable to expect the council to destroy the beaches.”

There is also the question of whether the council should be entitled to allow people of full capacity to decide for themselves whether to take the risk. Mr Tomlinson was freely and voluntarily undertaking an activity which inherently involved some risk.

Lord Hoffmann’s opinion was that it “will 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 choose to undertake upon the land. If people want to climb mountains, go hang-gliding or swim or dive in ponds or lakes, that is their affair. Of course the landowner may for his own reasons wish to prohibit such activities. He may think that they are a danger or inconvenience to himself or others. Or he may take a paternalist view and prefer people not to undertake risky activities on his land. He is entitled to impose such conditions, as the Council did by prohibiting swimming. But the law does not require him to do so.”

…there is an important question of freedom at stake. It is unjust that the harmlessness of recreation of responsible parents and children with buckets and spades on the beaches should give them pleasure and caused no risk to themselves or anyone else. This must be something to be taken into account in deciding whether it was reasonable to expect the council to destroy the beaches."

Long-established man-made features can effectively be deemed to be part of the natural landscape, not requiring protection if the hazard is obvious. This has relevance to historic parks and gardens.

### CASE SUMMARY

**WEIR-RODGERS v S F TRUST**

This case was on appeal to the Supreme Court against a previous judgement where the S F Trust, a company formed by the Franciscan Order, was found to be in breach of the duty of care under Section 4 of the Occupiers’ Liability Act, 1995. The claimant had been sitting down with some friends on land owned by the Franciscan Order, close to the edge of the cliff at Rosnowleigh, Co. Donegal, a popular beach and surfing destination. When she stood up, she lost her footing and fell down the edge of the cliff. She suffered multiple fractures to various parts of her body. In her claim, it was suggested that the area should have been fenced so as to prevent anyone entering into it and additionally or alternatively that there should have been a warning notice.

The Judge indicated that wherever there is a cliff edge, it is to be reasonably expected that there may be more dangerous places than others. He further indicated that a person sitting down near a cliff must be prepared for oddities in the cliff structure or in the structure of the ground adjacent to the cliff and he/she assumes the inherent risks associated therewith. There could of course, be something quite exceptionally unusual and dangerous in a state of a particular piece of ground which would impose a duty on the occupier, the effect of which would be that if he did not put up a warning notice he would be treated as having reckless disregard. He found that this was not the case in this claim. He concluded that there was no liability on the part of the appellant (SF Trust) in this case and he set aside the original High Court judgement and dismissed the action. Costs in the region of £1 million were awarded to the appellant. (31)
You must be prepared for children to be less careful than adults. Furthermore, a warning sign, however clear in itself, cannot warn if the child is unable to read. However, in some circumstances, particularly in the case of a young child, the parent may hold the primary duty of care.

Warning a visitor of dangers might be sufficient to absolve you from liability, but only if it was sufficient to enable the visitor to be reasonably safe.

The Unfair Contract Terms Act 1977 says that:

“a person cannot by reference to any contract term or to a notice exclude or restrict his liability for death or personal injury resulting from negligence.”

In the case of other loss or damage, liability can only be excluded or restricted if the terms are reasonable.

The Highway Authority, which is usually the county council in the UK, has a duty to maintain the surface of paths together with associated structures, steps, drains, ramps, bridges and stepping stones which form part of the right of way (Highways Act 1980, 5.41 and 5.42). Stiles or gates across footpaths or bridleways must be maintained by the landowner in a safe and negotiable condition.

TRESPASSERS

Trespassers cannot make a claim for personal injury. You have a duty of care under OHSA towards trespassers if:
- you are aware of the danger or have reasonable grounds to believe that it exists, and
- you know that the trespasser is, or might be, in the vicinity of the danger, and
- the risk is one against which, in all the circumstances, you may reasonably be expected to offer the trespasser some protection.

An accident occurred at the Roman Painted House in Dover in July 2007. A woman on a night out with a friend fell over a wall at the site and sustained head injuries including a fractured skull which apparently left her with epilepsy. She had entered the private car park at the site to urinate while waiting for a taxi home after a few drinks.

The court heard that there had been no other accidents at this 3' high wall, which had been built about 40 years previously, was in good condition, painted white and readily visible.

The arguments presented by each side were these. The claimant argued that having invited persons onto the premises which contained a dangerous man-made feature in the form of the ha-ha, it was the defendant’s duty to take reasonable care to ensure that they left the premises safely in the dark. In answer, the defendant argued that the ha-ha, which had been in existence since the 18th century, was a well-established, permanent and familiar feature of the landscape at Hopetoun House.

This civil case followed an accident in September 2008 when a gentleman taking part in a night-time guided bat walk at Hopetoun House near Edinburgh sustained a broken ankle when he fell from the ha-ha whilst taking a shortcut across a lawn to the car park in the dark.

The facts of the case were that the claimant had taken part with his grandson in a guided tour led by a ranger to observe bats. At the start of the walk, all participants had received a safety briefing. When the walk ended, the claimant made his way back to the car park, but took the wrong route; when he realised his mistake, he took a short cut across the lawn (his grandson holding the torch) and fell into the ha-ha where the drop of about 5’ was greatest.

There was some disagreement in the evidence of witnesses as to what verbal instruction had been given at the end of the walk and whether the claimant had been present whilst this instruction was given.

The actual risks accepted are limited to those normally arising in the circumstances. Visitors might, for example, willingly accept the risks specifically associated with a sport or recreational activity in which they are participating (37).

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

WILLING ACCEPTANCE OF RISK
The defendant was the owner and operator of a public house in Newcastle City Centre. One of the original features was a grand open staircase with iron railings. The banisters were below the height required by applicable building regulations, but English Heritage did not accept that they should not be altered. The Council’s Building Control Department agreed that the applicable building regulation to increase the height would be waived.

In the months before the accident there had been two or 3 similar incidents resulting in no injury. About 6 months after the accident there was another incident following which the defendant had the staircase altered.

In March 2007, as the claimant left the premises after a night’s drinking, she tried to slide down a banister. She immediately fell backwards, landing on the marble floor four metres below. She sustained a fracture to her spine, resulting in tetraplegia.

The claimant proceeded for breach of a common law duty of care, and breach of the Occupier’s Liability Acts 1957 and 1984. It was held that the principle of voluntary assumption of risk, set out in recent occupier’s liability cases such as Webber v Hanson Aggregates plc [2008] 1 WLR 753, at [2008] 1 WLR 753, was fatal to the claimant’s case. She had freely chosen to do something, which she knew to be dangerous. The defendant did not owe a duty to protect the claimant from such an obvious and inherent risk.

There was nothing unusual about the premises and no danger attributable to their structure. The danger was created by the claimant’s decision to slide, not the handrail itself.

The Occupier’s Liability Acts 1957 and 1984 both prescribe that there is no liability on the part of an occupier for risks willingly accepted by a visitor or trespasser. These statutory defences are indistinguishable from the common law principle of volenti non fit injuria.

The mere fact of foreseeable (or even foreseen) risk of injury does not in itself create a duty of care, particularly in circumstances where that duty is said to arise in order to protect the claimant from their own foolish conduct. Case law demonstrated that a defendant does not owe a duty to regulate a claimant’s own conduct for the claimant’s own benefit. (38)

Section 3 of HSWA also applies to the keeping of bulls or other cattle in fields, while the Management of Health and Safety at Work Regulations 1999 requires an assessment of the risks arising from the keeping of cattle and the measures needed to protect the public. This would also apply to any landowner who has cattle on their property.

There has been some variation in the standard of expertise required among those undertaking inspections and in some cases the courts have accepted inspection by those with a good working knowledge of trees rather than trained specialists. Some cases recognise the need to take account of the level of visitor usage of the site and the relatively low risk from falling trees.

In the UK, Section 59 of the Wildlife and Countryside Act 1981 bars bulls of recognised dairy breeds from being large in fields crossed by public rights of way. Bulls of all other breeds are also banned from such fields unless accompanied by cows or other females. There are no specific protections on other cattle.

In civil law, in addition to duties under occupiers’ liability, the Animals Acts 1919 makes the keeper of an animal ‘strictly liable’ in some cases for injuries caused by their stock – this is relevant in circumstances where cattle escape from fields onto the public highway, with potential for serious injury to road users.

The courts have endeavoured to define what amounts to reasonable care in the context of tree safety, and have stated that the standard of care is that of the “reasonable and prudent landowner”. (41) In general, cases appear to confirm that occupiers should be aware of the condition of their trees and manage them accordingly. There appears to be a higher standard required of local authorities and large organisations, compared to private individuals.

A highway authority has a potential liability for fallen trees and branches for which it is responsible (Highways Act 1980 S. 421).

There has been some variation in the standard of expertise required among those undertaking inspections and in some cases the courts have accepted inspection by those with a good working knowledge of trees rather than trained specialists. Some cases recognise the need to take account of the level of visitor usage of the site and the relatively low risk from falling trees.

In deciding what was an appropriate inspection system the judge was influenced by the guidance given in the Health and Safety Executive’s document “Management of the risk from falling trees”. (29) For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and should be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice.

The two estate workers who inspected the trees had no formal arboricultural qualifications, but the judge remarked on their “very considerable practical knowledge and experience.”

The case was heard in the Crown Court of Newcastle-upon-Tyne, and the judge ruled that the landowner’s tree falling system was reasonable. He concluded: “Mr Atkins was involved in an accident. That is all it was. No one was to blame.”

In deciding what was an appropriate inspection system the judge was influenced by the guidance given in the Health and Safety Executive’s document “Management of the risk from falling trees”. (29) For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and should be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff who work in parks or highways as to what to look for would normally suffice.

The two estate workers who inspected the trees had no formal arboricultural qualifications, but the judge remarked on their “very considerable practical knowledge and experience.”

The judge was satisfied that there was adequate evidence of regular visual inspection by competent staff. On that basis the claim of negligence was dismissed.

In passing, the judge made a number of observations that are of interest:

a. The landowner did not have a written system for tree inspection in place. The judge observed that landowners who did so and kept full records were at an advantage.

b. The courts have endeavoured to define what amounts to reasonable care in the context of tree safety, and have stated that the standard of care is that of the “reasonable and prudent landowner”. (41) In general, cases appear to confirm that occupiers should be aware of the condition of their trees and manage them accordingly. There appears to be a higher standard required of local authorities and large organisations, compared to private individuals.

The courts have endeavoured to define what amounts to reasonable care in the context of tree safety, and have stated that the standard of care is that of the “reasonable and prudent landowner”. (41) In general, cases appear to confirm that occupiers should be aware of the condition of their trees and manage them accordingly. There appears to be a higher standard required of local authorities and large organisations, compared to private individuals.

The judge himself held that the duty of care of the landowner was qualitatively different from that of the professional arboriculturalist.

The nature and extent of the practical steps a landowner is required to take depend on the particular circumstances of the case.

Material factors include the type, size and location of the landowner’s property; its proximity to a highway; the size and nature of traffic; the size of the estate and resources of the landowner; the number and location of other trees on the estate; whether the landowner is an individual or a body; the continuity of employment of those carrying out inspections.

Routine use of binoculars and climbing of trees were not reasonable requirements for inspection.

The defect discovered in the bough of the tree that fell onto the highway would not have been readily apparent to inspection.

A drive-by inspection confined to incidental views would not be sufficient to discharge the duty of care of the landowner. (43)