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## BUILDING HACKING: RESPONDING TO RECREATIONAL TRESPASS

In our previous bulletin, occupiers' liability was considered under the main Occupiers' Liability Act, 1957. It is less well known however, that there is an equally important Act which deals with liability owed to trespassers. As a property owner you should also be aware that you may owe a duty of care to trespassers under the Occupiers' Liability Act, 1984 to take reasonable care to see that they do not suffer injury on the premises by reason of a danger on those premises.

The nature of trespass is evolving with the rise of the 'urban explorer', who risks death and injury for which you as occupier may be liable. There is also the risk of negative publicity which may damage your business.

Urban exploration by 'recreational trespassers' or 'building hackers' has been popularised by increasing media coverage and the rise of specialist internet forums. Urban explorers are focussed on exploring places off-limits to the public, for the thrill of being outside the rules everybody else follows or in places no-body else knows about, and overcoming the obstacles and risks to access them.

Although not generally malicious, urban explorers expose themselves to a wide range of risks - across the urban jungle. It is common for urban explorers to access spaces and structures that are intrinsically

unsafe without full safety equipment, from tower cranes and roof spaces to confined or abandoned spaces - no structure is invulnerable. You may prefer this to malicious entry upon your property, including criminal damage or theft, however recreational trespassers could injure themselves whilst on your property and you may be held liable for their injury.

The range of buildings which have been explored and photographed by urban explorers is staggering ... and still growing by all accounts. Has your building or land been 'explored'? The Snow Hill development in central Birmingham has been one such victim, as noted by the Birmingham Post in January 2009 in their article "*Birmingham's tall buildings targeted by thrill-seekers*"



[click here for details](#). According to various internet forums, there are many other notable landmark buildings in England which have attracted this sort of attention.

Under the 1984 Act, occupiers' liability to trespassers is determined by reference to several factors, including:

- the risk of a trespasser sustaining an injury by reason of any danger due to the state of the premises or things done or omitted to be done on them;
- the steps an occupier has taken to warn of the danger; and
- the steps taken to discourage trespassers from incurring risk.

In England & Wales, trespass is a civil matter which is usually dealt with by the County Courts. On proving possession of your land/structure, you are able to pursue a trespasser for damages. However it is unlikely that you will be able to obtain a Court order for payment of significant damages (let alone enforce it), so as to deter recreational trespassers. Trespass is not a criminal offence except in very specific cases e.g. aggravated trespass, trespass on a railway, licensed airports or protected high profile Crown and nuclear sites designated pursuant to the Serious Organised Crime and Police Act, 2005.

Of course, assessing the risk of trespass and the condition of your property, coupled with sufficient security measures, should significantly reduce the potential for a trespasser to enter your property and injure himself. These considerations are especially important if you have mothballed a building or intend to do so. For instance, have you considered:

- the risk of trespass including recreational trespass e.g. a simple search of the internet may reveal details about your site discussed by potential trespassers;
- the risk of children trespassing - to whom a higher duty may be owed;
- whether the level of security is appropriate;
- whether all data has been removed or secured to comply with Data Protection rules e.g. could paper records have been left unsecured; and
- whether appropriate health and safety risk assessments have been completed and hazards remedied, guarded or sign-posted appropriately e.g. to protect contractors or trespassers - have steep drops been guarded, hazardous chemicals removed etc? Alternatively have sufficient warnings been put in place in respect of such risks?

If you are unsure of your potential liability under the Occupiers' Liability Act 1984 or would like to discuss how you might best mitigate the possibility of a claim, please contact:

Martin Edwards  
Partner  
T: 0870 763 1340  
E: martin.edwards@martineau-uk.com

Michael Lawrence  
Partner  
T: 0870 763 1376  
E: michael.lawrence@martineau-uk.com

**This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.**

**Key Real Estate Contacts:**

**Real Estate - Property**

John Rice - Partner & Head of Property  
T: 0800 763 1572  
E: john.rice@martineau-uk.com

Clive Read - Partner & Head of Real Estate  
T: 0800 763 1439  
E: clive.read@martineau-uk.com

James Spreckley - Partner  
T: 0800 763 1672  
E: james.spreckley@martineau-uk.com

Amanda Hanmore - Partner  
T: 0800 763 1582  
E: amanda.hanmore@martineau-uk.com

Simon Coghlan - Partner  
T: 0800 763 1431  
E: simon.coghlan@martineau-uk.com

Iain Johnston - Partner  
T: 0800 763 1232  
E: iain.johnston@martineau-uk.com

Bhavesh Amlani - Partner  
T: 0800 763 1448  
E: bhavesh.amlani@martineau-uk.com

Quentin Butler - Partner  
T: 0800 763 1484  
E: quentin.butler@martineau-uk.com

Richard Schmidt - Partner  
T: 0800 763 1201  
E: richard.schmidt@martineau-uk.com

Kathy Toon - Partner  
T: 0800 763 1459  
E: kathy.toon@martineau-uk.com

**Real Estate - Disputes**

Martin Edwards - Partner & Head of Real Estate Disputes  
T: 0800 763 1340  
E: martin.edwards@martineau-uk.com

Michael Lawrence - Partner  
T: 0800 763 1376  
E: michael.lawrence@martineau-uk.com

**Real Estate - Construction & Engineering**

Michael Craik - Partner & Head of Construction and Engineering  
T: 0800 763 1341  
E: michael.craik@martineau-uk.com

Paul Mountain - Partner  
T: 0800 763 1344  
E: paul.mountain@martineau-uk.com

Stephen Belshaw - Partner  
T: 0800 763 1611  
E: stephen.belshaw@martineau-uk.com



## iPRT Group

Intelligent Transport Planning Solutions

Tel 0845 47 48 851

Fax 0871 900 7432

Email [info@iprtgroup.com](mailto:info@iprtgroup.com)

Web [www.iprtgroup.com](http://www.iprtgroup.com)

Offices Newcastle upon Tyne, Leeds, Manchester,  
Birmingham, London, Edinburgh